

CITY OF RYE

NOTICE

There will be a special meeting of the City Council of the City of Rye on Wednesday, September 5, 2012, at 8:00 p.m. in the Council Room of City Hall. *The meeting will be preceded by a meeting of the Litigation Committee beginning at 7:00 p.m. in the Mayor's Conference Room. The Council will convene at 7:30 p.m. and it is expected they will adjourn into Executive Session at 7:31 p.m. to discuss real estate matters.*

AGENDA

1. Pledge of Allegiance.
2. Roll Call.
3. Authorization for the City Manager to enter into a broker agreement between the City of Rye and CBRE to market the property located at 1037 Boston Post Road.
Roll Call.
4. Authorization for the City Manager to enter into a Purchase and Sale Agreement between the City of Rye and Lester's of Rye, LLC for the right of first refusal for the purchase of the property located at 1037 Boston Post Road.
Roll Call.
5. Authorization for the City Manager to enter into an Amendment to extend the Lease Agreement with Lester's of Rye, LLC.
Roll Call.
6. Continuation of Public Hearing to discuss potential capital projects to be included in a November, 2012 Bond Referendum.
7. Continuation of Public Hearing to adopt bond resolutions for the November, 2012 Referendum for capital projects.
8. Adjournment.

The next regular meeting of the City Council will be held on Wednesday, September 12, 2012 at 8:00 p.m.

** City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at www.ryeny.gov under "RyeTV Live".

* Office Hours of the Mayor by appointment by emailing dfrench@ryeny.gov.



CITY COUNCIL AGENDA

NO. 3

DEPT.: City Manager

DATE: September 5, 2012

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into a broker agreement between the City of Rye and CBRE to market the property located at 1037 Boston Post Road.

FOR THE MEETING OF:

September 5, 2012

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The City's lease with the current tenant, Lester's of Rye, LLC, ends in March 2013. The City will enter into a broker agreement with CBRE to market the property. The City will determine if there are any other interested buyers in the Property during a 120 day due diligence period. A listing sheet will be distributed describing the property and specifying the terms of any offer.

See attached.

William V. Cuddy
Executive Vice President
Brokerage Services

Gene Pride
Senior Vice President
Capital Markets Group

CBRE

177 Broad Street, Suite 700
Stamford, CT 06901-2001

203 329 7900 Tel
203 352 8998 Fax

william.cuddy@cbre.com
gene.pride@cbre.com

Ms. Kristen Kelley Wilson
City of Rye
1051 Boston Post Road
Rye, NY 10580

RE: 1037 Boston Post Rd.
Rye, New York

Dear Ms. Wilson,

It was a pleasure speaking with you and the members of the Rye City Council last week regarding the disposition of the above property. We believe this asset will receive significant interest from the marketplace given its excellent location and the numerous possibilities it offers to a variety of users and investors.

In moving forward, we suggest a strategy that promotes a "for sale" and "for lease" marketing program simultaneously. This approach enables the property to be exposed to owner/user tenants, real estate investors as well as tenants that may have an interest in leasing the building, but not purchasing it. In this last scenario, a new longer term lease would significantly enhance the value when the building is ultimately sold.

We have summarized the proposed fee schedule for different potential outcomes as we discussed last week.

Lease: The proposed fee shall be calculated by multiplying the annual rent by the following percentages: 6% for years 1-3, 3% for years 4-10, 2% for years 11-20, and 1% for any years after that. If there is a cooperating broker involved in the lease transaction, then the fee will be increased by 50% in each year and CBRE would compensate the cooperating broker out of that fee. If the current tenant, Lester's, were to lease the building, then CBRE would reduce the fee to 50% of the above percentages, assuming there is not a cooperating broker.

Sale: The proposed fee shall be calculated by multiplying the sales price by 4% if there is no other broker involved and 6% if there is a cooperating broker, out of which CBRE would compensate the cooperating broker. If the current tenant, Lester's, purchases the building, the fee shall be 3%.

A draft engagement letter is included for your convenience. Given the timing of Lester's lease expiration in less than 12 months, we encourage initiating the marketing program immediately. We are excited about the assignment and would look forward to working on behalf of the City of Rye on this project.

If there are any questions that we can help with in the meantime, please do not hesitate to contact us.

Sincerely,



William V. Cuddy



Gene Pride



CBRE, Inc.
177 Broad Street
Suite 700
Stamford, CT 06901

203 329 7900 Tel
203 352 8998 Fax

www.cbre.com

May __, 2012

City of Rye
1051 Boston Post Road
Rye, NY 10580

Attn: Ms. Kristen Kelley Wilson

Re: 1037 Boston Post Road, Rye, NY (the "Premises")

Dear Ms. Wilson:

1. This agreement shall commence now and shall end on May 30, 2013.
2. You grant to us, during the term of this agreement, the exclusive right to lease or sell the above-referenced Premises. You may fix the initial offering price of the Premises, after consultation with us, in your sole and absolute discretion.
3. We agree to market the Premises using such advertising, canvassing, solicitation of outside brokers, and other promotional and marketing activities as you and we may agree upon. Subject to your prior approval, you authorize us at your expense to prepare, place and distribute advertising, signs, plans, brochures, flyers and other forms of marketing of the Premises. The estimated costs (as approved by you) shall be paid to us in advance, subject to prompt adjustment against paid invoices. To the extent we can use our internal facilities for signs, plans and flyers, you agree to reimburse us for our actual costs for such items, unless you expressly direct us to use an outside vendor, in which case we will do so.
4. You agree to refer to us all inquiries you receive relating to the Premises and to conduct all negotiations exclusively through us. We will present to you all bona fide offers and conduct all negotiations under your supervision, direction, and control, with such participation by you and your counsel as you direct.
5. We will provide you with appropriate analysis and comparison of each offer and counteroffer and recommend to you which offer to accept; but all final business and

legal decisions shall be made solely by you; and all binding agreements shall be executed and delivered solely by you.

6. You shall be free to reject any proposed transaction for any reason; and, if you do not effect a disposition of any portion of the Premises during the term hereof (or any extension), you shall owe us no compensation for our services hereunder (other than as noted in paragraph 3, above).
7. If, during the term of this agreement, the Premises or a portion thereof are leased, you shall pay us commission(s) as follows: (a) if we are the sole broker on a transaction, you shall pay us one (1) full commission in accordance with the attached Schedule "A" (the terms of which are incorporated herein); (b) however, you authorize us to cooperate with outside brokers representing potential customers for the Premises; and (c) in the event that such outside broker(s) procure a tenant, including a CBRE, Inc. ("CBRE") tenant representative broker or brokerage team not part of the agency team, you shall pay us an additional one-half (1/2) commission for a total of one and one-half (1-1/2) commissions; and (d) we shall compensate the successful outside broker(s) out of the monies you pay us in accordance herewith, but in no event for more than one (1) full commission. Such commission(s) shall be paid upon full execution and unconditional delivery of the binding transactional documents. However, if Lester's of Rye leases the Premises without outside broker participation, you shall pay us fifty percent (50%) of a full commission in accordance with the attached Schedule "A" (the terms of which are incorporated herein).
8. If, during the term of this agreement, there is a sale or other disposition of the Property, you shall pay us commission(s) as follows: (a) if we are the sole broker on a transaction, you shall pay us four percent (4%) of the gross purchase price at closing; (b) however, you authorize us to cooperate with outside brokers, including a CBRE buyer representative broker or brokerage team not part of the seller team, representing potential customers for the Property; and (c) in the event that an outside broker procures a sale or other disposition of the Property, you shall pay us six percent (6%) of the gross purchase price unless the buyer is willing to pay its own broker; and (d) we shall compensate the successful outside broker out of the monies you pay us in accordance herewith, but in no event for more than two and two fifths percent (2.4%) of the gross purchase price, unless that broker is being paid by the customer. However, if Lester's of Rye purchase the Premises without outside broker participation, you pay us three percent (3%) of the gross purchase price at closing.
9. When a potential customer for your Premises is represented by an outside broker, you agree that you will not permit initial lease or sales contracts drafts to issue until the

outside broker has executed and delivered an acceptable brokerage commission agreement.

10. (a) Because of the substantial number of brokers and salespersons employed by CBRE, a CBRE broker or brokerage team may, on occasion, represent a prospective tenant seeking to lease space in the Premises, which representation is independent of your representation by the CBRE leasing agency team. In such cases, we will disclose our dual role in the potential transaction to both you and to the prospective tenant, and will implement our usual internal safeguards to assure confidentiality to both you and the prospective tenant in your and their respective dealings with and through us. You agree that such occasional dual representation may occur, subject to appropriate disclosure and consent to payment of our commissions as provided for hereinabove. A prospective tenant may also agree to pay us pursuant to a separate agreement, and you consent to such payment by the prospective tenant.

(b) You acknowledge and agree that our duties and obligations hereunder, whether express or implied, shall in no way be affected by representation of prospective tenants or tenants currently occupying space in the Premises, if any, by CBRE leasing brokers based upon CBRE's pre-existing or independent relationships with such tenants, whether for space in the Premises or for space in other buildings, so long as we implement our usual internal safeguards to assure confidentiality to both you and any such tenant or prospective tenant in your and their respective dealings with and through us.

11. If, by the first anniversary of the end of this agreement, you enter into a lease transaction (or a contract of sale and subsequently sell the Premises) with a customer to whom the Premises had been submitted or shown during the term (per a list we will furnish promptly after termination), when the lease is signed or the title transfers in the case of a sale, you will pay us the commission(s) outlined in this agreement as if it had not ended. If, at the expiration of such period, the lease document(s) or contract of sale are out for signature, this agreement shall govern such transaction if, as, and when the lease is signed or the title transfers in the case of a sale.
12. We shall have the right to enter the Premises, upon appointment, at any time during regular business hours for the purpose of inspection and showing the Premises to prospective purchasers. You shall cooperate with us to effect a sale of the Premises as contemplated hereby including, but not limited to, providing us promptly on request with relevant documents, information and materials concerning the Premises, the improvements thereon, leases, financing and other matters, as well as a plat or survey showing the boundaries of the Premises and locations of all existing easements, rights of way and improvements on the Premises, and current evidence of your good and marketable title to the Premises.

13. You acknowledge that we are not obligated to and have made no independent investigation of the physical conditions of the Premises including, but not limited to, the condition of the structure (exterior or interior), the electrical and mechanical systems thereof, the fixtures, personal property and equipment therein, or of any environmental matters with respect thereto, or of hazardous substances thereon, if any (collectively, the "Physical Conditions"). All documents and materials, investigations, reports and information with respect to the Physical Conditions shall be prepared by or for the Seller and shall be furnished to prospective Purchasers on your behalf, and you shall be solely responsible for same. You agree to indemnify and hold us harmless from and against all claims, settlements, and judgments and all costs of defense against such claims (including attorneys' fees and disbursements) suffered by us which arise out of or relate to the Physical Conditions, your title, and/or the marketability thereof.
14. You represent to us that you are the fee owner of the Premises and that your address and the address of the Premises hereinabove set forth are accurate and complete.
15. This agreement: (i) expresses the parties' entire agreement on the matters covered hereinabove; (ii) supersedes all prior understandings between them on such matters, oral or written; (iii) shall be governed by New York law (without regard to its conflict of laws principles); (iv) shall be binding on their lawful representatives, successors, designees, and assigns; (v) shall not be altered, or terminated except in a writing signed by each; (vi) signatures may be exchanged by hand, by mail, by fax, by photocopy, or in counterparts -- any such method being binding on both sides when completed and exchanged; and (vii) the invalidity or unenforceability of any particular provision of this agreement shall not affect the validity or enforceability of the other provisions hereof.

Very truly yours,

CBRE, INC.

By: _____

Name:

Title:

AGREED:

CITY OF RYE

By: _____

Name:

Title:

SCHEDULE "A"

1. **LEASE COMMISSION RATES:** Subject to the Definitions and the applicable provisions set forth below, CBRE shall be paid Commissions on Lease transactions calculated by (a) multiplying the Rent by the following Lease Commission Rates and (b) adding the products together:

First full year.....	6%
Second year.....	6%
Third year	6%
Fourth year through and including the 10th year.....	3%
Eleventh year through and including the 20th year.....	2%
Twenty-first year and beyond.....	1%

2. **MINIMUM COMMISSION:** The minimum Commission on any transaction shall be \$2,500.
3. **LEASE WITH PERCENTAGE RENT:** Commissions shall be calculated and paid in the usual manner for Leases, but shall be computed on the higher of the minimum fixed gross Rent or ninety (90%) percent of the Landlord's asking price.
4. **LEASE WITH OPTION(S) TO RENEW, EXTEND OR EXPAND:** If a Lease contains one or more Options by Tenant to renew, extend or take additional space, CBRE shall be paid a Commission by the Landlord: (a) upon the exercise of the renewal or extension Option calculated as if the renewal or extension period were included in the initial term of the Lease; and/or (b) upon the exercise of the Option for additional space calculated as if a new Lease were executed for such additional space. The Option shall be deemed exercised even if the terms of the renewal, extension, or taking of additional space do not conform exactly to the terms expressed in the original Option; in such event, the Commission shall be calculated on the actual terms of the renewal, extension, or taking of additional space, but not for a longer term or larger space than was provided for in the original Option unless CBRE is involved in the negotiations for such longer term or larger space. Use of substantially equivalent documents (however characterized) to consummate the transaction shall not adversely affect CBRE's right to its Commission.
5. **LEASE WITH OPTION TO BUY:** If Tenant exercises an Option contained in the Lease to purchase all or any portion of the Premises (or the building in which the Premises are located), and the transaction closes, CBRE shall be paid a Commission by the Landlord at closing, upon passing of title, calculated by applying the Sale Commission Rates to the gross purchase price paid. The Option shall be deemed exercised even if the ultimate terms of sale do not conform exactly to the terms expressed in the original Option. Use of substantially equivalent documents (however characterized) to consummate the transaction shall not adversely affect CBRE's right to its Commission.
6. **LEASE WITH RENT ABATEMENT AND/OR LANDLORD'S WORK:** Portions of the term during which Rent is abated (i.e., so called "free rent") as an inducement to Tenant entering into a Lease (unrelated to Landlord's work letter or allowance for the construction/alteration of the Premises) shall be excluded from the term of the Lease in calculating the Commission; and the Lease

Commission Rates shall be applied to each successive twelve (12) month period (a "Lease Year") following rent commencement under the Lease. In calculating the Commission, there shall be no deduction for the amount of the Landlord's work allowance or the value of its work letter; and a Rent abatement in lieu of Landlord's work letter or allowance (or for Tenant's agreement to take the Premises "as is") shall be treated as if Rent were being paid during that period at the Rentals reflected in the Lease for the next succeeding period.

7. **LEASE WITH CANCELLATION CLAUSE:** A Landlord's right of cancellation and a Lease cancellation by mutual agreement subsequent to execution and delivery of the Lease shall not affect CBRE's right to payment of its full Commission on the entire Lease term, as if there were no cancellation clause. Where a Tenant has a unilateral, discretionary right to cancel a portion of the Lease term on or after a fixed date (*i.e.*, a right to cancel not contingent upon the occurrence of subsequent events), CBRE shall initially be paid a full Commission for the non-cancellable portion of the term only; and, if the Lease is not cancelled by Tenant within the time to do so fixed in the Lease, or the right to do so is earlier waived or released, CBRE shall thereupon be paid the balance of the Commission for the remainder of the term forthwith. However, if the Lease cancellation right can be exercised by Tenant only upon payment of a sum that the parties to the Lease fixed by taking into account the unamortized portion of the Commission as of the projected date of cancellation, CBRE shall be paid its full Commission on the entire Lease term as if there were no cancellation clause. A Lease shall not be deemed cancelled unless Tenant vacates the Premises.
8. **PAYMENT:** Commissions on Sale transactions are payable to CBRE, Inc. at closing upon passing of title (or equivalent final and binding documents), unless title fails to pass because of the seller's default under the contract of sale, in which case the Commission is payable upon the occurrence of such default. In the event that a building in which a Lease Commission(s) has been earned, but not yet paid, is sold, then the payment of such Commission(s) shall be accelerated and immediately due to CBRE at the closing regardless of any other installment payment timetable contained in any agreement of which this schedule is a part. All unpaid installments of a Commission, if any, shall automatically be accelerated if payment of any installment is not made when due, either in accordance with CBRE's invoice or after written notice; and the accelerated unpaid balance shall bear interest at an annual rate of two (2%) percentage points above the "Prime Rate" from the original due date of the Commission (or each installment thereof) through the date of collection. (The "Prime Rate" shall be the prime rate quoted in the Money Rates Section of The Wall Street Journal on the first business day of each calendar quarter during which the Commission remains unpaid.) In the event payment is not made when due, CBRE shall also be entitled to all collection costs it incurs, including reasonable attorneys' fees and disbursements.
9. **DEFINITIONS:**

"CBRE" shall mean either CBRE, Inc., any of its real estate brokerage affiliates, or (where CBRE is the leasing or sales agent) any outside broker who executes and delivers a brokerage commission agreement acceptable to CBRE and/or its principal (as applicable).

"Commission" shall mean a full real estate brokerage commission calculated in accordance with the rates and provisions set forth above and in accordance with the terms of the annexed agreement (if any).

"Landlord" shall also mean, as applicable, "owner", "sublandlord", "assignor", and their respective successors and assigns.

"Lease" shall also mean, as applicable, "sublease", "assignment", or similar occupancy agreement (however characterized) and related documents executed contemporaneously therewith.

"Lease Year" shall mean each successive twelve (12) month period following the rent commencement date specified in the Lease and any fraction thereof at the end of the Lease term.

"Option" shall also mean rights of first refusal and of first offer granted to Tenant in the Lease.

"Premises" shall mean the space governed by the Lease and shall include, in addition to the space originally demised under the Lease at the time of signing, all additional space appurtenant thereto taken by Tenant between Lease signing and move-in.

"Rent" shall mean the aggregate gross fixed rent as stated in the Lease for each Lease Year, less Tenant electric charges (if fixed on a rent inclusion basis), and excluding all future tax, labor, operating expense, cost of living, and other similar escalation charges. Notwithstanding the foregoing, with respect to an assignment or a recapture of a lease, Rent shall mean the aggregate rent payable under the lease at the time of such assignment or recapture, including without limitation any then current escalations, additional rent and/or operating expenses other than electricity. If the fixed rent for a portion of the Lease term is stated in terms other than a fixed dollar amount (e.g., 90% of fair market value or the then escalated gross rent) the Commission calculation for that portion of the term shall employ the fixed dollar amount of the Rent for the immediately preceding period. Fixed rent increases stated in the Lease (if any) shall be averaged over the term. If the Lease states the fixed rent on a "net" basis, it shall be grossed up for purposes of the Commission calculation, using the tax and operating expense components stated in the Lease for the applicable base years or, if not so stated, as invoiced for the first twelve (12) months of the term in which such components are fully payable.

"Sale" shall also include, in addition to a conventional purchase of a fee simple interest, joint ventures, swaps, and any other transaction, however characterized, by which the Landlord's equity in the property is transferred to a third party for consideration.

"Tenant" shall also mean, as applicable, its respective successors and assigns.



CITY COUNCIL AGENDA

NO. 4

DEPT.: City Manager

DATE: September 5, 2012

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into a Purchase and Sale Agreement between the City of Rye and Lester's of Rye, LLC granting Lester's of Rye, LLC the right of first refusal for the purchase of the property located at 1037 Boston Post Road.

FOR THE MEETING OF:

September 5, 2012

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The City's lease with the current tenant, Lester's of Rye, LLC, ends in March 2013. The City has had discussions with the current tenant regarding the possible sale of 1037 BPR and Lester's has demonstrated a strong interest in purchasing the building. The City will determine if there are any other interested buyers in the Property during a 120 day due diligence period during which CBRE will be marketing the property. A listing sheet will be distributed describing the property and specifying the terms of any offer. Lester's of Rye, LLC has put an offer in on the property and, if the City enters into this agreement, the City will be agreeing to grant Lester's a right of first refusal to purchase the property after the due diligence period has ended subject to the terms of the Purchase and Sale Agreement.

See attached.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“*Agreement*”), dated as of the ____ day of September, 2012, by and between **CITY OF RYE, NEW YORK**, a New York municipal corporation (“*Seller*”), and **LESTER’S OF RYE, LLC**, a New York limited liability company (“*Purchaser*”), recites and provides:

RECITAL

Seller is the owner of fee simple title to certain property located on 1037 Boston Post Road in the City of Rye, Westchester County, New York and identified as Tax Parcel Number(s): 146.11-1-4 (collectively, the “*Premises*”), as more particularly described on Exhibit A annexed hereto. Seller wishes to sell the Premises and Purchaser wishes to purchase it on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I **Agreement**

1.1 Purchase Agreement. This Agreement shall constitute a binding contract, on the terms and conditions herein set forth, for the purchase and sale of the Premises.

ARTICLE II **Transfer of Assets**

2.1 Seller agrees to convey, sell, assign and transfer to Purchaser, and Purchaser agrees to purchase from Seller, free and clear of any and all liens, encumbrances, equities, restrictions, liabilities and claims, other than “Permitted Exceptions” (as hereinafter defined) the Premises.

ARTICLE III **Purchase Price**

3.1 Purchase Price. Subject to the provisions of Section 4.1 of this Agreement, the purchase price for the Premises shall be **THREE MILLION SIX HUNDRED THOUSAND and NO/100 DOLLARS (US\$3,600,000.00)** in lawful currency of the United States of America (as the same may be subject to change pursuant to Section 4.1 of this Agreement, the “*Purchase Price*”) of which the Deposit shall be a part.

3.2 Deposit. Pursuant to the provisions of Section 4.1(b) and (c) of this Agreement, at the time this Agreement is fully executed, Purchaser shall deliver in escrow to Harris Beach, PLLC (the “**Escrow Agent**”) a sum equal to ten percent (10%) of the purchase price (the “**Deposit**”) by check, subject to collection, drawn on a commercial banking institution maintaining branch banking facilities in the State of New York to be held in an interest bearing account for the benefit of Purchaser. The Deposit shall be retained or refunded, as the case may be, in accordance with the terms of the Escrow Agreement attached hereto as Exhibit B. At closing, the Deposit shall be paid to Seller and applied to the Purchase Price or shall be otherwise applied pursuant to the provisions of this Agreement.

ARTICLE IV **Purchaser’s Right of First Refusal**

4.1 Offering Period.

(a) The parties hereto acknowledge and agree that, from the date of this Agreement to and including January 4, 2013 (the “**Offering Period**”), Seller shall undertake a public process to solicit bona fide offers for the purchase and sale of the Premises from persons or entities other than Purchaser (“**Third Party Offers**”) and to receive and evaluate the same. Such public process will include, among other things, the preparation and distribution by Seller of a listing sheet describing the Premises and will require that all such Offers be in writing and received by the office of Seller’s City Manager on or before 5:00 p.m. eastern time on December 4, 2012. Any and all such Third Party Offers shall be reviewed by Seller’s City Council on or before December 5, 2012.

(b) Seller shall have the right, in its sole discretion, to accept or reject any Third Party Offers, provided, however, that (i) prior to Purchaser’s exercise of its right of first refusal hereunder, Seller may not accept any Third Party Offer which sets forth a purchase price equal to or less than \$3,600,000, and (ii) Seller may accept any Third Party Offer which sets forth a purchase price greater than \$3,600,000 provided such acceptance is subject to Purchaser’s right of first refusal hereunder. On or before December 7, 2012, Seller shall notify Purchaser in writing as to whether it has received any Third Party Offers and, if so, the terms and conditions of each of the same (Seller shall be entitled, in its sole discretion, to redact or withhold from Purchaser any information that would serve to identify the person or entity making any such Offer). If Seller advises Purchaser, on or before December 7, 2012, that it has not received any Third Party Offers, or any Third Party Offers with a purchase price in excess of \$3,600,000, this Agreement shall remain in full force and effect.

(c) If Seller has advised Purchaser that it has received any Third Party Offers with a purchase price in excess of \$3,600,000, Purchaser shall have the right to agree to purchase the Premises on the terms and conditions set forth in this Agreement excepting, however, that the purchase price shall be equal to that set forth in the Third Party Offer which contains the highest purchase price of all of such Third Party Offers (the “**Right of First Refusal**”). Purchaser shall exercise its Right of First Refusal by giving written notice thereof which is received by Seller by no later than 5:00 p.m. eastern time on the later of (i) December 19, 2012, or (ii) ten (10)

business days after Seller has so notified Purchaser. If Purchaser timely exercises its Right of First Refusal, this Agreement shall remain in full force and effect; provided, however, that Section 3.1 of this Agreement shall be deemed to have been amended to provide that the Purchase Price shall equal that set forth in the Third Party Offer which contains the highest purchase price of all of such Third Party Offers. If Seller does not receive such written notice by the date and time specified in this subsection (c), Purchaser's right to purchase the Premises pursuant to this Agreement shall terminate and be null, void and of no further force or effect. Subject to the provisions of Article XXIII "Environmental Contingency", the provisions of this Section 4.1 shall survive the termination of this Agreement. In the event that Purchaser is not the highest offer and Purchaser decides not to exercise its Right of First Refusal, the Seller and Purchaser are not liable to each other for any reason under this Agreement and the Deposit is refunded to Purchaser.

ARTICLE V **Settlement**

5.1 Time and Place. Settlement of the purchase and sale of the Premises shall be made at the offices of Seller's attorneys, Harris Beach PLLC, 445 Hamilton Avenue, Suite 1206, White Plains, New York 10601, or at Purchaser's election, at the office designated by its lender or at such other place as the parties may agree to in writing, on (i) January 30, 2013 if Seller has not received any Third Party Offers or any Third Party Offers with a purchase price in excess of \$3,600,000, or (ii) if Seller has received any Third Party Offers with a purchase price in excess of \$3,600,000, sixty (60) days from the date that Purchaser timely exercised its Right of First Refusal pursuant to this Agreement, as the case may be ("**Settlement**"). Settlement may be postponed by either party, but in no event whatsoever shall Settlement take place later than March 15, 2013.

5.2 Deliveries. At Settlement, as a condition precedent to Seller's obligation to perform its covenants under this Agreement, Purchaser shall deliver to Seller: (i) payment of the Purchase Price (less the Deposit, which shall be remitted to Seller by the Escrow Agent at Settlement), as the same may be adjusted after taking into account the prorations set forth in Section 6.1 of this Agreement, by, at Purchaser's option, wire transfer, certified check or bank draft; (ii) such affidavits of Seller, or other documents as may be required to record Seller's closing documents and issue a fee title policy in favor of Purchaser; and (iii) such other instruments customarily executed by Purchaser in transactions of a similar kind and/or required by any governmental authority or agency. At Settlement, as a condition precedent to Purchaser performing its covenants under this Agreement, Seller shall deliver to Purchaser: (a) the "Deed" (as hereafter defined); (b) such affidavits of Seller or other documents as may be required to record Seller's closing document and issue a fee title policy in favor of Purchaser subject only to those exceptions as Purchaser has agreed or been deemed to have agreed to accept pursuant to Section 7.1 of this Agreement; (c) a duly completed and executed Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code and any other certificates required by any governmental authority or agency; and (d) an assignment of the lease and any security deposit thereunder. If payment of the Purchase Price is made by wire transfer, payment shall not be deemed to have been made until such time as the institution designated by Seller to

receive such funds has confirmed to Seller that such funds have been received and credited to Seller's account. Any certified check or bank draft used to pay any portion of the Purchase Price shall be unendorsed, drawn to the order of Seller on a commercial banking institution having branch bank offices in the State of New York.

5.3 Costs. Seller shall pay for the cost of the UCC searches against Seller, the cost of a new or re-dated map of an instrument survey certified to Purchaser, the title company and the Purchaser's lender, the cost of preparing the Deed, all costs and premiums charged by Seller's title insurance company for all searches and the issuance of a fee owner's title insurance policy in the amount of the purchase price, and any New York State Transfer Tax or any other transfer tax (but only in the event that, by reason of Seller's exemption from the payment thereof, Purchaser is required by law to pay the same). Purchaser shall pay recording/filing fees for recording the deed, any mortgage, assignment of leases and rents, and financing statements, and any mortgage recording taxes. Each party shall pay its own legal, accounting and other expenses incurred in connection with this Agreement or Settlement hereunder.

ARTICLE VI

Prorations and Adjustments

6.1 Prorations and Adjustments. (a) Purchaser shall be responsible for the payment of all real estate taxes, water and sewer charges and assessments, installments of assessments for local improvements and special assessments and ad valorem levies payable with respect to the period from and after the Settlement. There shall be no pro-rations for such amounts as between Seller and Purchaser at Settlement and Seller shall pay any due prior to the settlement.

(b) Any prepaid rent and rent for the month in which the closing occurs shall be adjusted. Seller shall pay to, or credit Purchaser, with the amount of any security deposit under the Lease Agreement (as hereinafter defined).

ARTICLE VII

Title and Survey Objections

7.1 Title and Survey Objections.

(a) Purchaser hereby acknowledges and agrees that, within five (5) days following the date on which Purchaser delivers the Deposit to the Escrow Agent pursuant to this Agreement, Seller shall provide Purchaser with the results of the title search (Seller shall be responsible for the payment of said title search) in order to obtain a commitment (the "**Commitment**") for an owner's title insurance policy from a title insurance company licensed to do business in the State of New York (the "**Title Company**"). Seller agrees to sell and convey, and Purchaser agrees to purchase, the Premises subject only to the following "**Permitted Exceptions**": (i) any state of facts disclosed by the most recent survey of the Premises delivered by Seller to Purchaser; (ii) any state of facts arising after the date of the most recent survey

delivered to Purchaser, provided such facts do not render title unmarketable and/or uninsurable and do not interfere with the current use of existing buildings and improvements; (iii) omitted; (iv) any installment not yet due and payable of assessments affecting the Premises or any portion thereof; (v) any recorded utility company rights and easements for electricity, water, steam, gas, telephone or other service or the right to use and maintain poles, lines, wires, cables, conduits, pipes, boxes and other fixtures and facilities in, over, under and upon the Premises, provided they are not violated by the existing improvements or the current use thereof; (vi) any real estate taxes and assessments that are a lien but not yet due and payable; (vii) all laws, ordinances and governmental regulations, including all applicable building, zoning, land use and environmental ordinances and regulations, provided that they are not violated by the improvements or the current use thereof; (viii) any matters encumbering title as a result of the acts of Purchaser or its agents; (ix), possible encroachments not shown on any survey of the Premises, of trees, plant life, hedges, fences and sidewalks, and variations between record lines and trees, plant life, hedges, fences and sidewalks (none of which shall be deemed to render title unmarketable, provided such encroachments and variations, if any do not extend onto the Premises more than one foot at any point); and (x) upon the condition that the City of Rye shall provide a zoning letter regarding parking compliance, the right of Seller, as long as the property on the side of the Premises is used by the City (to be specifically provided in the easement agreement attached hereto as Exhibit C) to have its officers, officials and employees (who shall be required to display a permit) utilize ten (10) parking spaces on the Premises for the parking of automobiles only situated closest to the dumpster along the Blind Brook behind the building located as shown on the site plan and easement agreement annexed hereto on the Premises from 9 a.m. to 12 p.m. on weekdays that are not legal holidays in the State of New York (the “*Parking Reservation*”); provided, however, that Purchaser shall have the right to reserve such parking spaces from 9 a.m. to 12 p.m. on such weekdays during Purchaser’s special events provided that Purchaser gives notice to Seller no less than twenty four (24) hours in advance of the day(s) of any such special event(s).

(b) If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this Agreement, Seller shall, within a reasonable period of time following its receipt of all the Title Documents, notify Purchaser of its inability to do so. In such event, or if Purchaser shall have any other grounds under this Agreement for refusing to consummate the purchase provided for herein, Purchaser, nevertheless, may elect, by notice to Seller given within 10 days after receipt of notice from Seller of Seller’s inability to convey title as aforesaid, to accept such title as Seller may be able to convey without any credit against or resolution of the purchase price and without any liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this Agreement and the sole liability of Seller shall be to refund the Deposit to Purchaser. Upon such refund, this Agreement shall be null and void and of no further force or effect and the parties hereto shall be relieved of all further obligations and liability other than as explicitly set forth herein. In the absence of notice from Purchaser of Purchaser’s election to consummate the purchase or terminate this Agreement within 20 days of Seller’s notice, Purchaser shall be deemed to have elected to terminate this Agreement. Notwithstanding anything to the contrary set forth herein, Seller shall be obligated to remove all liens that can be removed by the payment of a liquidated sum (other than those caused by Purchaser’s acts), any title encumbrances created by Seller after the date of this Agreement, and

any violations for which the Seller as tenant under the Lease Agreement (as hereinafter defined) is not responsible.

ARTICLE VIII **The Deed**

8.1 The Deed. At Settlement, Seller shall deliver to Purchaser a statutory form of Bargain and Sale Deed with Covenant against Grantor's Acts, and the covenant required by Section 13 of the Lien Law, in proper form for recording, conveying the Premises, together with the buildings and/or improvements located thereon, subject only to the Permitted Exceptions and such other matters as Purchaser shall be required to and/or agree or be deemed to have agreed to take subject.

ARTICLE IX **Representations and Warranties**

9.1 Seller's Representations and Warranties. Seller represents and warrants as of the date hereof and by appropriate certificate delivered at Settlement will, as a condition to closing, represent and warrant as of Settlement that:

(a) Non-contravention. The execution and performance of this Agreement and Settlement hereunder will not conflict with any provision of law applicable to Seller, nor result in the breach of any provisions of, or constitute a default under, any agreement, instrument or judgment to which Seller is a party or by which Seller is bound.

(b) Organization, Good Standing and Power. Seller is duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite and legal right, power and authority to own its property and to enter into this Agreement and perform its obligations hereunder.

(c) Authorization and Execution. This Agreement has been duly authorized by all necessary action on the part of Seller, has been duly executed and delivered by Seller, constitutes the valid and binding agreement of Seller and is enforceable against Seller in accordance with its terms, subject to (i) general principles of equity and public policy (regardless of whether considered in a proceeding in equity or at law), and (ii) any and all bankruptcy, avoidance, reorganization, moratorium, fraudulent conveyance, preferential transfer, insolvency, or other similar laws relating to or affecting the enforcement of creditors' rights.

(d) Authority to Sell. Seller owns the Premises in fee simple absolute. The individual signing on behalf of the Seller confirms that he or she has the authority to enter into this Agreement and that no third party approvals are needed.

(e) Condemnation. Seller has received no written notices, and has no knowledge of any pending or threatened condemnation or eminent domain proceedings or any litigation or administrative proceedings affecting any portion of the Premises.

(f) Litigation. There is no litigation or other proceedings pending or, to the best of Seller's knowledge, threatened or contemplated against the Premises or any part thereof.

(g) Leases. Other than the Lease Agreement, there are no leases or rights of use or occupancy with respect to the Premises.

(h) Contractual Obligations. There are no service, maintenance or other contractual obligations with respect to the Premises that will be binding on the Purchaser after the Settlement (other than those entered into by Purchaser).

(j) Seller has delivered to Purchaser the complete copies of all environmental reports in its possession with respect to the Premises. Other than the information in such reports, Seller has no knowledge of any hazardous materials on or under the Premises or that the Premises is in violation of applicable environmental laws.

9.2 Additional Matters Relating to Seller's Representations. Seller makes no representations or warranties to Purchaser other than as specifically set forth in this Agreement. The Premises will, at Settlement, be transferred "as is, where is and with all faults on the date hereof without warranty or representation of any kind or character except as specifically set forth in this Agreement. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE OR AS TO THE CONDITION OF THE PREMISES, EXCEPT AS SET FORTH IN THIS AGREEMENT. Purchaser has not received any representations or warranties of any kind, whether written or oral, except as specifically set forth in this Agreement. Purchaser's sole remedy for material breaches or violations of the foregoing representations or warranties which are uncovered by Purchaser and remain uncured by Seller after its receipt of notice of the same on or prior to Settlement shall be to terminate this Agreement whereupon the Deposit shall be forthwith paid to Purchaser.

For purposes of this Agreement, the term "**AS IS, WHERE IS AND WITH ALL FAULTS**" shall mean the following:

PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PREMISES "AS IS, WHERE IS AND WITH ALL FAULTS" CONDITION ON THE DATE HEREOF, EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLERS ARE NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR

INFORMATION PERTAINING TO THE PREMISES OR RELATING THERETO OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLERS, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING.

UPON SETTLEMENT, EXCEPT FOR THE OBLIGATIONS OF SELLER THAT SHALL EXPRESSLY SURVIVE SETTLEMENT HEREUNDER, PURCHASER, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, OFFICIALS, EMPLOYEES, AGENTS, LEGAL REPRESENTATIVES AND ASSIGNS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, OFFICIALS, EMPLOYEES, AGENTS, LEGAL REPRESENTATIVES AND ASSIGNS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PREMISES. PURCHASER AGREES THAT THE TERMS OF THIS SECTION SHALL BE BINDING UPON ANY AND ALL SUCCESSORS IN INTEREST TO PURCHASER.

PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PREMISES, (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, OR (F) ANY OTHER MATTER WITH RESPECT TO THE PREMISES, AND, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SELLERS SPECIFICALLY DISCLAIM ANY REPRESENTATIONS REGARDING ANY ENVIRONMENTAL CONDITIONS.

9.3 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller that:

(a) Non-contravention. The execution and performance of this Agreement and Settlement hereunder will not conflict with any provision of law applicable to Purchaser, nor, to Purchaser's knowledge, result in the breach of any provisions of, or constitute a default under, any agreement, instrument or judgment to which Purchaser is a party or by which Purchaser is bound.

(b) Organization, Good Standing and Power. Purchaser is duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite and legal right, power and authority to own its property and to enter into this Agreement and perform its obligations hereunder.

(c) Authorization and Execution. This Agreement is enforceable against Purchaser in accordance with its terms, subject to (i) general principles of equity and public policy (regardless of whether considered in a proceeding in equity or at law), and (ii) any and all bankruptcy, avoidance, reorganization, moratorium, fraudulent conveyance, preferential transfer, insolvency, or other similar laws relating to or affecting the enforcement of creditors' rights.

(d) Authority to Purchase. The individual signing on behalf of Purchaser confirms that he has the authority to enter into this Agreement and that no third party approvals are needed.

9.4 Survival of Representations and Warranties. All representations, warranties and agreements made by either party in this Agreement shall survive Settlement and transfer of title.

ARTICLE X

Mortgages and Contracts

10.1 Mortgages and Contracts. Seller agrees that from the date of this Agreement to Settlement, it will (i) not mortgage, voluntarily place, or permit to be placed, a lien or encumber any part of the Premises, except if the same shall be discharged at Settlement; and (ii) not become a party to any licenses, leases, options, rights of first refusal, contracts, declarations, restrictions or agreements of any kind or nature relating to the Premises.

ARTICLE XI

Default

11.1 Default by Purchaser. The parties agree that, in the event of a default by Purchaser under this Agreement, the damages suffered by Seller would be difficult to ascertain. Seller and Purchaser agree that in the event of a default by Purchaser in closing pursuant to this Agreement, which is not cured within ten (10) business days of notice from the Seller, Seller may retain the Deposit as liquidated damages or seek specific performance (plus reasonable attorneys' fees incurred in connection with such action, provided that Seller prevails thereon).

11.2 Default by Seller. In the event that Seller defaults hereunder, Purchaser's remedies shall be (a) the cancellation of this Agreement by written notice to Seller, and the return of the Deposit and any interest earned thereon, or (b) specific performance (plus reasonable attorneys' fees incurred in connection with such action, provided that Purchaser shall prevail thereon) under this Agreement, or (c) any other remedies available in law or in equity.

ARTICLE XII

Risk of Loss

12.1 Risk of Loss. The risk of loss or damage to the Premises by fire or other casualty prior to Settlement shall be on Seller. If prior to Settlement, any material loss or damage occurs to all or any portion of the Premises by fire or other casualty, Purchaser shall be entitled to elect either to (a) terminate this Agreement and have the Deposit refunded, in which event the parties hereto shall have no further obligations or liabilities to one another hereunder except as otherwise expressly set forth in Section 21.1 hereof, or (b) proceed to Settlement, in which event all claims, insurance proceeds and other payments arising from any such loss, and all right, title and interest of Seller in and to the same, shall be paid or assigned to Purchaser, and the amount of the deductible shall be credited to the Purchase Price, with no other adjustment of the Purchase Price paid at Settlement. In all other cases, the parties shall proceed to Settlement with no other adjustment to the Purchase Price and all claims, insurance proceeds and other payments from such loss shall be paid or assigned to Purchaser.

ARTICLE XIII

Condemnation

13.1 Condemnation. If, prior to Settlement, any material taking pursuant to the power of eminent domain is proposed or occurs as to all or any portion of the Premises intended to be acquired at Settlement by Purchaser, or sale occurs in lieu thereof, Purchaser shall be entitled to elect either to (i) terminate this Agreement, or (ii) proceed to Settlement, in which event, all proceeds, awards and other payments arising from any such taking or sale shall be paid to Purchaser, with no adjustment of the Purchase Price paid at Settlement. If Purchaser elects to terminate this Agreement, the Deposit shall be refunded to Purchaser and the parties hereto shall

have no further obligations or liabilities to one another hereunder except as otherwise expressly set forth in Section 21.1 hereof. In all other cases, the parties shall proceed to Settlement with no adjustment to the Purchase Price and all claims, awards and other payments arising from such taking, and all of Seller's right, title and interest in and to the same, shall be paid or assigned to Purchaser at Settlement.

ARTICLE XIV
Agents and Brokers

14.1 Agents and Brokers. The City has engaged a broker and shall be solely responsible for any fees or commissions associated with the broker. The City agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorneys' fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representations and warranties.

ARTICLE XV
Binding Agreement

15.1 Binding Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns and is not intended to confer upon any other person any rights or remedies hereunder.

ARTICLE XVI
Notices

16.1 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made only if sent by prepaid overnight carrier, with a record of receipt, and sent via electronic mail to the parties at the following addresses:

If to Purchaser: Lester's of Rye, LLC
Attn: Perry Schorr
1037 Boston Post Road
Rye, New York 10580
e-mail: perry.lesters@gmail.com

And to: Westerman Ball Ederer Miller & Sharfstein, LLP
Attn: Philip L. Sharfstein, Esq.
1201 RXR Plaza
Uniondale, New York 11556
psharfstein@westermanllp.com

And to: Westerman Ball Ederer Miller & Sharfstein, LLP
Attn: Stuart Ball, Esq.
1201 RXR Plaza
Uniondale, New York 11556
e-mail: sball@westermanllp.com

If to Seller: The City of Rye
City Hall
Attn: Scott Pickup
1051 Boston Post Road
Rye, New York 10580
e-mail: manager@ryeny.gov

And to: Harris Beach, PLLC
Attn: Kristen Kelley Wilson, Esq.
445 Hamilton Avenue, Suite 1206
White Plains, New York 10601
e-mail: kwilson@ryeny.gov

Each communication shall be deemed to have been given on the date received.

ARTICLE XVII
Applicable Law

17.1 Applicable Law. This Agreement shall be construed, performed and enforced in accordance with the laws of the State of New York without regard or reference to its conflict of laws principles. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE STATE COURTS IN AND FOR WESTCHESTER COUNTY, NEW YORK OR THE FEDERAL COURTS IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE.

ARTICLE XVIII
Interpretation

18.1 Interpretation. When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural, and vice versa, and words in the masculine gender shall include the feminine and neuter genders, and vice versa.

ARTICLE XIX
Title and Headings; References

19.1 Title and Headings; References. Titles and headings to sections and subsections herein are inserted for convenience or reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. All section and subsection references in this Agreement are to the sections or subsections of this Agreement unless expressly stated to the contrary.

ARTICLE XX
Entire Agreement; Modification

20.1 Entire Agreement; Modification. This Agreement contains the entire agreement between the parties hereto relating to the Premises and supersedes all prior and contemporaneous negotiations, understandings, memoranda and agreements, written or oral, between the parties hereto. This Agreement shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this Agreement.

ARTICLE XXI
Miscellaneous

21.1 Survival. The provisions of Sections 4.1 and 22.1 shall survive the termination of this Agreement. The provisions of Section 5.3 and Articles VI, IX, XII, XIII and XIV through XXI of this Agreement shall survive Settlement hereunder.

21.2 Assignment. Seller may not assign this Agreement and all of its rights, duties and obligations hereunder to any person or entity. Purchaser may assign this Agreement and all of its rights, duties and obligations hereunder to a newly formed limited liability company of which Purchaser, or the principals of Purchaser, shall own controlling interest. No party shall be relieved of any liability arising hereunder in respect of any assignment pursuant to this Section, unless such assignor has received a written release expressly excepting such assignor from any liability that may arise hereunder.

21.3 Counterparts. This Agreement may be executed in two or more counterparts which together shall constitute a single agreement.

21.4 OFAC/Patriot Act Representations; Indemnity.

(a) Neither Seller nor Purchaser nor any owner of a direct or indirect interest in either (i) is listed on any Government Lists (as defined below), (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential

Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (iv) is currently under investigation by any governmental authority for alleged criminal activity.

(b) For purposes hereof, the term “**Patriot Act Offense**” means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (i) the criminal laws against terrorism; (ii) the criminal laws against money laundering, (iii) the Bank Secrecy Act, as amended, (iv) the Money Laundering Control Act of 1986, as amended, or the (v) Patriot Act (as defined below). For purposes hereof, the term “**Patriot Act**” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws. The term “**Patriot Act Offense**” also includes, without limitation, the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “**Government Lists**” means (x) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control (“**OFAC**”), (y) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC, or (z) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America.

(c) Each of Seller and Purchaser hereby agrees to indemnify, defend and hold the non-breaching party harmless from and against any and all claims (including, without limitation, court costs and reasonable attorneys’ fees actually incurred in connection with any such claims) for its breach of the foregoing representations contained in subsection (a) above. The representations, warranties and indemnity obligations contained in this Section 21.4 shall survive termination of this Agreement and/or closing under and delivery of the Deed pursuant to this Agreement.

21.5 Binding On Successors. This Agreement shall be binding upon and shall insure to the benefit of Purchaser and Seller and their respective representatives, successors and permitted assigns.

21.6 Fees and Other Expenses. Except as otherwise provided herein, each of the parties hereto shall pay its own fees and expenses in connection with this Agreement. In any dispute or action between the parties arising out of this Agreement, or in connection with the Premises, the prevailing party shall be entitled to have and recover from the other party all losses, direct compensatory damages, costs and expenses (including without limitation court costs and reasonable attorneys’ fees) related thereto, whether by final non-appealable judgment or by out-of-court settlement.

21.7 Captions. Title and captions are inserted for convenience only and shall not define, limit or construe in any way the scope or intent of this Agreement. References to Paragraphs are to Paragraphs as numbered in this Agreement unless expressly stated otherwise.

21.8 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, must be made in writing and in each instance signed on behalf of each party.

ARTICLE XXII

Lease Agreement Extension

22.1 Lease Agreement Extension. The parties acknowledge that Purchaser currently occupies and uses the Premises pursuant to an Assignment and Assumption agreement, dated July 1, 2008 and amended April 13, 2011, by and between Seller, as lessor, and Purchaser, as lessee (the "***Lease Agreement***"), the term of which is scheduled to expire on March 31, 2013. In consideration of Purchaser's agreement to execute and deliver this Agreement and to perform its covenants and obligations hereunder, Seller and Purchaser hereby agree that the term of the Lease Agreement is hereby extended to December 31, 2013 pursuant and subject to the terms and conditions thereof.

ARTICLE XXIII

Environmental Contingency

23.1 Environmental Contingency. Purchaser shall have a period of 60 days to have environmental reports and/or tests performed with respect to the Premises. Such environmental due diligence period shall commence upon signing this Agreement and shall end 60 days from the signing. If such environmental reports or tests reveal that the Premises contain any hazardous materials or is not in compliance with environmental laws, Seller shall have the right to cure any identified environmental issues within thirty (30) days. If Seller fails to properly cure any environmental issues, Purchaser shall have the right to terminate this Agreement, in which case any Deposit paid hereunder shall be returned to Purchaser. In the event that Purchaser terminates this Agreement pursuant to this Article, Seller may, at its sole discretion, sell the Premises to the highest Third Party Offer.

23.2 Definitions:

- (a) As used herein, “Hazardous Substances” shall include but not be limited to any and all substance (whether solid, liquid or gas) defined, listed or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including, but not limited to petroleum and petroleum byproducts, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, mold, mycotoxins, microbial matter and air borne pathogens (naturally occurring or otherwise), but excluding substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.
- (b) As used herein, “Environmental Laws” shall include, but may not be limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term “Environmental Law” shall also include, but not be limited to, any present and future federal, state and local laws, statutes ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Premises; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Premises to any governmental authority or other person, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Premises; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Premises.

Signature Page Follows

DRAFT

IN WITNESS WHEREOF, each of the parties hereto has caused this Purchase and Sale Agreement to be executed in its name pursuant to due authority as of the dates set forth below.

SELLER:

PURCHASER:

CITY OF RYE, NEW YORK

LESTER'S OF RYE, LLC

By: _____

By: _____

Scott D. Pickup

Perry Schorr

Its: City Manager

Its: _____

Date: September ____, 2012

Date: September ____, 2012

DRAFT

EXHIBIT A

Description of Premises

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EXHIBIT B

Escrow Agreement

ESCROW AGREEMENT, made as of the ____ day of September, 2012, between CITY OF RYE, NEW YORK, a New York municipal corporation hereinafter referred to as "Seller"), and LESTER'S OF RYE, LLC, a New York limited liability company (hereinafter referred to as "Purchaser") and HARRIS BEACH, PLLC, having an address at 4445 Hamilton Avenue, Suite 1206, White Plains, New York, 10601 (hereinafter referred to as "Escrow Agent").

WITNESSETH:

WHEREAS, Seller and Purchaser are the parties to a Purchase and Sale Agreement dated as of the date hereof with respect to the sale and purchase of property located at 1037 Boston Post Road, Rye, New York (the "Agreement"; defined terms used herein shall have the same meanings set forth in the Agreement); and

WHEREAS, Seller and Purchaser desire that Escrow Agent act as escrow agent with respect to the Deposit in accordance with the terms and conditions set forth below; and

WHEREAS, Escrow Agent is willing to act in such capacity.

NOW, THEREFORE, Seller, Purchaser and Escrow Agent hereby agree as follows:

1. Escrow Agent is hereby appointed as Escrow Agent to hold and distribute the Deposit in accordance with the terms hereof and Escrow Agent hereby acknowledges receipt of the Deposit and agrees to act in such capacity.

2. The Deposit shall be placed in a separate interest-bearing trust account at an FDIC-insured bank. At Closing all accrued interest on the Deposit shall be applied as a credit toward the Purchase Price, or upon termination of this Agreement by Purchaser, all accrued interest on the Deposit shall be promptly paid to Purchaser.

3. Escrow Agent will deliver the Deposit and any interest earned thereon to Purchaser or Seller, as the case may be, upon the following terms and conditions:

- (i) To Seller upon the consummation of the Closing contemplated herein, or
- (ii) To Purchaser if Purchaser has terminated the Agreement as set forth in Paragraph 23.1, or
- (iii) To Seller, upon receipt of a written notice from Seller stating that Seller is

entitled under the Agreement to the Deposit and demanding payment of the same; provided, however, that Escrow Agent will not honor such demand until not less than ten (10) days after the date on which Escrow Agent shall have delivered a copy of such notice and demand to Purchaser, nor thereafter, if during such ten (10) day period, Escrow Agent shall have received written notice of objection from Purchaser in accordance with the provisions of Section 10 below.

(iv) To Purchaser, upon receipt of a written notice from Purchaser stating that Purchaser is entitled under the Agreement to the return of the Deposit and demanding return of the same; provided, however, that Escrow Agent will not honor such demand until not less than ten (10) days after the date on which Escrow Agent shall have delivered a copy of such notice and demand to Seller, nor thereafter, if during such ten (10) day period, Escrow Agent shall have received written notice of objection from Seller in accordance with the provisions Section 10 below.

4. Upon receipt of a written demand for the Deposit pursuant to the provisions of subsections 3(iii) or 3(iv) above, Escrow Agent shall promptly deliver a copy thereof to the other party. The other party shall have the right to object to the delivery of the Deposit by delivery to and receipt by Escrow Agent of written notice of objection within ten (10) days after the receipt of Escrow Agent's mailing of such copy to the other party, but not thereafter. Upon receipt of such notice of objection, Escrow Agent shall promptly deliver a copy thereof to the party who made the written demand.

5. If Escrow Agent shall have received a notice of objection as provided above, within the time therein prescribed, or any disagreement or dispute shall arise between or among any of the parties hereto resulting in adverse claims and demands being made for the Deposit whether or not litigation has been instituted, then, except for Purchaser's sole right to terminate pursuant to Section 3(ii) above, in which event (x) Purchaser's sole notice shall be adequate and acceptable to Escrow Agent (whether protested by Seller or not), and (y) the Deposit and all interest thereon shall be promptly paid to Purchaser in full, Escrow Agent shall continue to hold the Deposit subject to such adverse claims and Escrow Agent shall not be or become liable in any way or to any person for its refusal to comply with such claims or demand, and (i) in the event of any joint written direction from Seller and Purchaser, Escrow Agent shall then disburse the Deposit in accordance with said direction, or (ii) in the event Escrow Agent shall receive a written notice advising that a litigation over entitlement to the Deposit has been commenced, Escrow Agent may deposit the Deposit with the clerk of the court in which said litigation is pending, or (iii) Escrow Agent may but shall not be required to take such affirmative steps as it may, at its option, elect in order to substitute another impartial party reasonably acceptable to Seller and Purchaser to hold the Deposit in accordance with this Agreement subject to such adverse claims including the commencement of an action for interpleader in a court of competent jurisdiction, the cost thereof to be borne by whichever of Seller and Purchaser is the losing party, and thereupon Escrow Agent shall be released of and from all liability hereunder. Seller and Purchaser jointly and severally agree to reimburse Escrow Agent for any and all expenses incurred in the discharge of its duties under this Article, including, without limitation, attorneys' fees. Nothing herein, however, shall affect the liability of a defaulting party to another party for reimbursement of any amount paid to Escrow Agent under this subsection.

6. It is expressly understood that Escrow Agent acts hereunder as an accommodation to Seller and Purchaser and as depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it, or for the form or execution of such instruments or for the identity, authority or right of any person executing or depositing the same, or for the terms and conditions of any instrument pursuant to which Escrow Agent or the parties may act. The Escrow Agent shall have no liability other than for its gross negligence or actual malfeasance and shall, in all instances, act in accordance with the terms and provisions of this Escrow Agreement.

7. Escrow Agent shall not have any duties or responsibilities except those set forth in this Escrow Agreement and shall not incur any liability in acting upon any signature, notice, request, waiver, consent, receipt or other paper or document believed by Escrow Agent to be genuine, and Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so.

8. In the event of a dispute between the parties regarding the disposition of the Deposit, except for Purchaser's sole right to terminate pursuant to Section 3(iii) above, in which event (x) Purchaser's sole notice shall be adequate and acceptable to Escrow Agent (whether protected by Seller or not) and (y) the Deposit and all interest thereon shall be promptly paid to Purchaser in full, Escrow Agent shall take one of the actions described in paragraph 5 above, and upon delivery of the Deposit in accordance therewith, Escrow Agent shall be relieved of all liability, responsibility or obligation with respect to or arising out of the Deposit and any and all of its obligations therefrom.

9. In the event of any conflict between the provisions of this Escrow Agreement and the provisions of the Agreement, the provisions of the Agreement shall control as between Seller and Purchaser.

10. All notices required or permitted hereunder shall be given in accordance with the notice provision of the Agreement. Seller's and Purchaser's respective addresses for notices are as set forth in the Agreement. Escrow Agent's address for notices is as follows:

Harris Beach, PLLC
445 Hamilton Avenue, Suite 1206
White Plains, New York 10601
Attention: Kristen Kelley Wilson, Esq.
E-mail: kwilson@harrisbeach.com

11. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. This Escrow Agreement may not be amended or modified, nor can any provision hereof be waived, except by a written instrument signed by the party against whom enforcement

of any such amendment, modification or waiver is sought.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which constitute one and the same instrument.

14. This Agreement is to be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

CITY OF RYE, NEW YORK

By: _____

Name:

Title:

PURCHASER:

LESTER'S OF RYE, LLC

By: _____

Name:

Title:

ESCROW AGENT:

HARRIS BEACH, PLLC

By: _____

Authorized Signatory

EXHIBIT C

Easement Agreement

DRAFT



CITY COUNCIL AGENDA

NO. 5

DEPT.: City Manager

DATE: September 5, 2012

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into an Amendment to extend the Lease Agreement with Lester's of Rye, LLC.

FOR THE MEETING OF:

September 5, 2012

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: Resolution authorizing an amendment to extend the current Lease Agreement with Lester's of Rye, LLC for the property at 1037 Boston Post Road.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The current lease between the City of Rye and Lester's of Rye, LLC will be amended as follows:

- The term of the lease is extended from the current expiration date of March 31, 2013 to terminate on December 31, 2013.

See attached.



CITY OF RYE

CITY HALL • RYE, NEW YORK 10580

TELEPHONE (914) 967-5400

September __, 2012

Lester's of Rye LLC
2411 Coney Island Avenue
Brooklyn, New York 11223

Re: THIRD AMENDMENT TO LEASE AGREEMENT (the "Third Amendment")

"Premises"	Building located at 1037 Boston Post Road, Rye, New York and appurtenant parking lot.
"Landlord"	City of Rye
"Tenant"	Lester's of Rye LLC as successor in interest to Cloz Companies, Inc. by Assignment and Assumption.
"Lease"	Lease dated as of October 23, 2006 between Landlord, as landlord, and Assignor, as tenant, as amended by: 1) an Amendment to Lease Agreement acknowledged October 10, 2007; and 2) an Amendment to Lease Agreement dated April 2011.
"Assignment and Assumption"	Assignment and Assumption Agreement dated as of July 1, 2008 between Tenant and Assignee.

Landlord and Tenant, being bound unto the Lease, hereby agree to modify and amend the Lease by entering into this Third Amendment. The terms of the Third Amendment are as follows:

- 1. Incorporated Terms.** All terms set forth in Lease are incorporated herein, except as expressly modified and amended below.
- 2. Term.** The parties acknowledge and agree that the Commencement Date of the initial term of the Lease is April 1, 2007 and the Expiration Date of the initial Term of the Lease is March 31, 2011. The Term of the Lease was extended for a period of one (1) year pursuant to the terms of the Second Amendment. The Second Amendment Term terminates on March 31, 2013. The Term of the Third Amendment shall commence on April 1, 2013 (the “Third Amendment Commencement Date Term”) and shall terminate on December 31, 2013 (the “Extension Term”).
- 3. Extension Term Rent.** The Annual Rent payable by the Tenant during the Extension Term (the “Extension Term Rent”) shall be **\$275,000.00** per annum (**\$22,916.67** per month). The Tenant shall commence payment of the Extension Term Rent on the Extension Term Commencement Date, and shall continue payments until the Extension Term Expiration Date.
- 4. Additional Rent – Sewer Taxes.** During the Extension Term, Tenant shall pay as Additional Rent the Tenant’s share of the Sewer Taxes assessed against the Property in monthly installments as set forth in Rider 2 of the Lease.
- 5. Landlord’s Work.** Landlord shall have no obligation to perform any work in or to the Premises, and Tenant shall accept and continue possession of the Premises in its “as is” condition.
- 6. Broker.** Landlord and Tenant each mutually covenant, represent and warrant, the one to the other, that it has had no dealing or communications with any broker or agent in connection with this Third Amendment and each covenants and agrees to pay, hold harmless and indemnify the other from and against any and all cost, expense (including reasonable attorneys’ fees) or liability for any compensation, commission or charges to any broker or agent claiming the right to receive same through the indemnifying party.
- 7. Interpretation.** In the event of any inconsistencies between this Third Amendment and the Second Amendment or Lease, this Third Amendment shall govern and be binding.
- 8. Ratification of Lease.** Except as expressly modified and amended in this Third Amendment, all of the terms, provisions and conditions of the Lease are hereby ratified and confirmed by Landlord and Tenant.
- 9. Binding Effect.** This Amendment shall inure to the benefit and be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns.

10. Counterparts. This Amendment may be executed in any number of counterparts, all of which taken together shall constitute but one and the same agreement and all of which shall be of equal validity and effect. This Amendment, when sent by electronic or facsimile transmission, shall be considered as an original with the same binding force as the original.

11. Notices. All notices in connection with this Agreement or the Property shall be made in writing and shall be personally delivered, or delivered by a national overnight courier service, or send by certified mail, return receipt requested, postage prepaid. Notices to Landlord shall be delivered to the address specified in Section 1(a). Notices delivered to Landlord also shall be delivered in the manner specified herein simultaneously to Landlord at the address specified in Section 1(b) and to Landlord's legal counsel, **Harris Beach PLLC, 445 Hamilton Avenue, Suite 1206, White Plains, New York 10603, Attn: Kristen Kelley Wilson, Esq.** Notices to tenant shall be delivered to the Premises. Notices delivered to Tenant shall also be delivered in the manner specified herein simultaneously to to Tenant's legal counsel **Westerman Ball Ederer Miller & Sharfstein, Attn: Philip L. Sharpstein, Esq., 1201 RXR Plaza, Uniondale, NY 11556.** All notices shall be effective upon delivery or attempted delivery in accordance with this provision. Either party may changes its notice address upon written notice to the other party given in accordance with this provision.

The remaining provisions of the Lease shall remain in full force and effect.

This document shall be known as the Third Amendment.

By signing below, the Landlord and Tenant agree to the terms of this Third Amendment:

Landlord:

By: Scott D. Pickup, City Manager
City of Rye

Tenant:

By: Perry Schorr, Member
Lester's of Rye LLC



CITY COUNCIL AGENDA

NO. 6

DEPT.: City Manager

DATE: September 5, 2012

CONTACT: Scott Pickup, City Manager

ACTION: Continuation of Public Hearing to discuss potential capital projects to be included in a November, 2012 Bond Referendum.

FOR THE MEETING OF:

September 5, 2012

RYE CITY CODE,

CHAPTER
SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Timeline for a 2012 Bond Referendum:

September 12, 2012 – close Public Hearing and adopt the Bond resolution by 60% majority including a yes vote by the Mayor
September, 2012 – send ballot information to Board of Elections (City Staff action only)
November, 2012 – General Election
January, 2013 – borrow funds if Bond Referendum passes
March, 2013 – begin work on projects
November, 2013 – determine borrowing costs
Jan. to June, 2014 – complete projects
January, 2014 – first interest payment due

See attached tentative project list.

**Potential Capital Projects for Inclusion in
Possible November 2012 Bond Referendum
City of Rye, New York**

Project Name	Description	Estimated Cost
<i>Smith Street Reconstruction</i>	Project involves the reconstruction (including paved surface and base) and curb replacement, where necessary. Other improvements as noted in the 2009 CBD Planning and Streetscape Study would also be considered.	\$330,000
<i>Smith/Elm/Purchase Intersection Improvements</i>	As recommended in the 2009 CBD Capital Planning and Streetscape Study the project involves replacing existing signal with stop signs and other traffic calming measures including changes in intersection paving material, bump-outs, new crosswalks and other street amenities.	\$550,000
<i>Purchase/Fremd/Purdy Signal Replacement</i>	As recommended in the 2009 CBD Capital Planning and Streetscape Study the project involves replacing traffic signals at this intersection to meet NYSDOT requirements and adding a turning lane on Theodore Fremd Avenue to reduce intersection delays.	\$475,000
<i>Locust Avenue Sewer Siphon Replacement</i>	Abandon the “siphon” under the Locust Avenue bridge and construct a new sewer line with a more reliable, straight, gravity flow sewer line to the County trunk in Blind Brook. The existing pipes are approximately 100 years old, and one of the existing 4” pipes is partially compromised with an obstruction. The siphon conveys sewage for many businesses in the CBD.	\$250,000
<i>Boston Post Road Retaining Wall</i>	The rock wall/embankment on Boston Post Road opposite Purdy Avenue has been shedding rocks, compromising slope and wall stability. The wall and the rock outcropping it sits on straddles private and City right-of-way property lines. Wall and sidewalk replacement could be phased as follows: 1) Thistle Lane to Purdy Avenue: \$300,000; 2) Purdy Avenue to Holly Lane: \$300,000; 3) sidewalk extension south of Holly Lane: \$300,000.	\$300,000 – \$900,000
<i>Sidewalk and Pedestrian Improvements</i>	Includes funding dedicated for pedestrian safety enhancements including projects like creating or upgrading deteriorated sidewalks, crosswalk improvements, installation of flashing beacons or speed indicators, pedestrian safety improvements around schools, ADA compliance and other projects identified by the City Council, City staff or the Shared Roadways Committee.	\$250,000
<i>Rye Free Reading Room Improvements</i>	Installation of sprinklers and fire alarm system, ADA and flood control improvements and security cameras.	\$200,000
<i>Police/Court Upgrades</i>	Project includes construction of new secured sally port, elevator, interior stairwell, expanded court clerk facilities, judges chamber, court officer facilities and prisoner holding facility.	\$1,250,000
<i>Total</i>		\$3,605,000- \$4,205,000

Safe Routes To Schools Grant Projects
August 15, 2012 (Revised August 24, 2012)

Project Name	Description	Estimated Cost (Preliminary)
<i>Pedestrian Activated Rectangular Rapid Flash Beacons (RRFB)</i>	<p>This project would involve the installation of Rectangular Rapid Flash Beacons (RRFB) at existing un-signalized intersections near existing Rye City Schools. The signals are pedestrian activated and would serve to alert drivers of pedestrians within crosswalks. These intersections were specifically chosen because of they are not currently manned by school crossing guards. Each pair of signals cost approximately \$20,000 to install. The following intersections have been indentified for the installation of RRFB and the schools they would serve:</p> <p>Boston Post Road @ Old Post Road (High/Middle School and Osborn Elem. School) Hewlett Avenue @ Forest Avenue (Milton Elem. School) Apawamis Avenue @ Forest Avenue (High/Middle School) Forest Avenue @ Eve Lane (Midland Elem. School)</p>	\$80,000
<i>Theall/Osborn Road Intersection Pedestrian Improvements</i>	<p>This project would extend the existing curbs at the Theall Road/Osborn Road intersection to reduce the approximately 90-foot crossing distance by approximately 30%. Reducing the crossing distance of this street is a pedestrian safety enhancement especially for children attending Osborn Elementary School. The project would also replace deteriorated sidewalk at the intersection, providing ADA-compliant ramps and increasing the size of the landing area for pedestrian waiting to cross Osborn Road.</p>	\$25,000
<i>Grace Church Street Intersection Pedestrian Improvements</i>	<p>This project would extend the existing curbs on Grace Church Street at its intersection with Midland Avenue. The existing crossing distance of this signalized intersection is nearly 100 feet and creates a barrier to children walking from the Loudon Woods neighborhood to nearby Midland School. The intersection does not include pedestrian signals. In addition to extending the existing curb lines the project would modify the existing narrow center island in Grace Church Street to provide a pedestrian refuge area. Re-configure Center Island.</p>	\$45,000
<i>Milton School Sidewalk Safety Improvements</i>	<p>This project would elevate an existing sidewalk and install a six inch curb to better separate vehicles from the pedestrian area. Currently, approximately 450 feet of sidewalk on Hewlett Avenue adjacent to Milton Elementary School is at the same elevation as the street. There is no physical barrier to prevent vehicles in the adjacent drop-off zone from encroaching into the sidewalk, which is heavily used by children.</p>	\$75,000



CITY COUNCIL AGENDA

NO. 7

DEPT.: City Manager

DATE: September 5, 2012

CONTACT: Scott Pickup, City Manager

ACTION: Continuation of Public Hearing to adopt bond resolutions for the November, 2012 Bond Referendum for capital projects.

FOR THE MEETING OF:

September 5, 2012

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

A Public Hearing will be held to adopt bond resolutions for the capital projects to be included in the November, 2012 Bond Referendum.

See attached Bond Resolutions and Ballot Propositions.



Joseph S. Fazzino, Jr.
Interim Comptroller
1051 Boston Post Road
Rye, New York 10580

Tel: (914) 967-7303
Fax: (914) 967-7370
E-mail: jfazzino@ryeny.gov
<http://www.ryeny.gov>

CITY OF RYE
Department of Finance

TO: Mayor & Council

FROM: Joe Fazzino, Interim Comptroller

DATE: July 6, 2012

RE: 2012 Bond Resolutions

Attached please find drafts of two serial bond resolutions authorizing the financing of the acquisition of public buildings and the reconstruction and improvements to City streets. The bond resolutions require approval by 5 council members and are subject to mandatory referendum.

Also attached are the mandatory referendum materials (ballot proposition and abstract) for the next general City election to take place on November 6, 2012.

Please contact me with any questions.

Thank you

Joe Fazzino
Interim Comptroller

Bond Resolution

Acquisition, Construction and Reconstruction of Public Buildings

**EXTRACTS FROM MINUTES OF MEETING OF THE CITY COUNCIL
OF THE CITY OF RYE, NEW YORK**

(Acquisition, Construction and Reconstruction of Public Buildings)

A _____ meeting of the City Council of the City of Rye, located in the County of Westchester, New York, was held at _____, in Rye, New York, on _____, 2012 at ____ o'clock, __M., at which meeting a quorum was at all times present and acting. There were:

PRESENT:

ABSENT:

ALSO PRESENT:

* * * * *

Member _____ moved the adoption of the following resolution. The motion was seconded by Member _____. The City Council was polled. The motion was adopted by a vote of affirmative votes (being at least five members of the voting strength of the City Council) and negative votes and ____ absent votes.

BOND RESOLUTION, DATED _____, 2012, AUTHORIZING THE ISSUANCE OF UP TO \$1,500,000 AGGREGATE PRINCIPAL AMOUNT SERIAL BONDS OF THE CITY OF RYE, NEW YORK, PURSUANT TO THE LOCAL FINANCE LAW, TO FINANCE THE ACQUISITION CONSTRUCTION AND RECONSTRUCTION OF PUBLIC BUILDINGS IN AND FOR THE CITY.

WHEREAS, the City Council of the City of Rye (the “City”), located in County of Westchester, in the State of New York (the “State”), has determined that it is in the public interest of the City to finance the costs of the acquisition, construction and reconstruction of public buildings, as set forth hereinabove, at a cost of up to \$1,500,000, including preliminary costs, all in accordance with the Local Finance Law; and

WHEREAS, the City Council has determined that it is in the public interest of the City to require the operation of this bond resolution to be approved by the qualified electors of the City, notwithstanding any other the legal requirements of the Local Finance Law;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rye, as follows:

Section 1. There is hereby authorized to be issued serial bonds of the City in the aggregate principal amount of up to \$1,500,000, pursuant to the Local Finance Law, in order to finance the cost of the specific object or purpose hereinafter described.

Section 2. The specific object or purpose to be financed by the issuance of such serial bonds is the acquisition, construction and reconstruction of public buildings, including applicable preliminary and incidental costs in connection therewith (the “Project”).

Section 3. The City Council of the City has ascertained and hereby states that (a) the estimated maximum cost of the Project is not to exceed \$1,500,000, (b) no money has heretofore been authorized to be applied to the payment of the costs of the Project; (c) the City Council of the City plans to finance the costs of the Project from the \$1,500,000 proceeds of the serial bonds or

bond anticipation notes authorized herein, and (d) the maturity of the obligations authorized herein will be in excess of five (5) years.

Section 4. It is hereby determined that the Project referred to in Section 2 hereof is a specific object or purpose described in paragraph 12(a)(1) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of the Project is twenty-five (25) years. The serial bonds in the principal amount of up to \$1,500,000 authorized herein shall have a maximum maturity of twenty-five (25) years computed from the earlier of (a) the date of such serial bonds, or (b) the date of the first bond anticipation notes issued in anticipation of the issuance of such serial bonds.

Section 5. Subject to the terms and conditions of this Resolution and the Local Finance Law, and pursuant to the provisions of Sections 21.00, 30.00, 50.00, 56.00 and 60.00, inclusive, of the Local Finance Law, the power to authorize bond anticipation notes in anticipation of the issuance of the serial bonds authorized by this Resolution and the renewal of such bond anticipation notes and the power to prescribe the terms, form and contents of such serial bonds and such bond anticipation notes authorized by this Resolution, and the power to issue, sell and deliver such serial bonds and bond anticipation notes are hereby delegated to the City Comptroller (or Acting City Comptroller), as the chief fiscal officer of the City. The City Comptroller is hereby authorized to execute on behalf of the City all serial bonds issued pursuant to this Resolution and all bond anticipation notes issued in anticipation of the issuance of such serial bonds, and the City Clerk is hereby authorized to affix the seal of the City to all such serial bonds and all such bond anticipation notes and to attest such seal. Each interest coupon, if any, representing interest payable on such serial bonds shall be authenticated by the facsimile signature of the City Comptroller.

Section 6. The faith and credit of the City is hereby and shall be irrevocably pledged for the punctual payment of the principal of and interest on all obligations authorized and issued pursuant to this Resolution as the same shall become due.

Section 7. When and if this Resolution takes effect following the approval thereof by the qualified voters of the City at the next general City election to be held on November 6, 2012, the City Clerk shall cause the same to be published together with a notice in substantially the form prescribed by Section 81.00 of the Local Finance Law in the, a newspaper having a general circulation in the City. The validity of the serial bonds authorized by this Resolution and of bond anticipation notes issued in anticipation of the sale of such serial bonds may be contested only if such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or the provisions of law which should be complied with as of the date of the publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or if such obligations are authorized in violation of the provisions of the Constitution of the State.

Section 8. Prior to the issuance of obligations authorized to be issued by this bond resolution, the City Council of the City shall comply with all applicable provisions prescribed in Article 8 of the Environmental Conservation Law, all regulations promulgated thereunder by the New York State Department of Environmental Conservation, and all applicable Federal laws and regulations in connection with environmental quality review relating to the Project (collectively, the “environmental compliance proceedings”). In the event that any of the environmental compliance proceedings are not completed, or require amendment or modification subsequent to the date of adoption of this bond resolution, the City Council of the City will re-adopt, amend or modify this bond resolution prior to the issuance of obligations authorized to be issued herein upon the advice of

bond counsel. It is hereby determined by the City Council of the City that the Project will not have a significant effect on the environment.

Section 9. The City hereby declares its intention to issue the obligations authorized herein to finance the cost of the Project. The City covenants for the benefit of the holders of the obligations authorized herein that it will not make any use of the proceeds of such obligations, any funds reasonably expected to be used to pay the principal of or interest on such obligations or any other funds of the City, and will not make any use of the facilities financed with the proceeds of such obligations which would cause the interest on such obligations to become subject to Federal income taxation under the Internal Revenue Code of 1986, as amended (the "Code"), (except for the alternative minimum tax imposed on corporations by section 55 of the Code and except for the environmental tax imposed on corporations by section 59A of the Code) or subject the City to any penalties under section 148 of the Code, and that it will not take any action or omit to take any action with respect to such obligations, the proceeds thereof or any facilities financed thereby if such action or omission would cause the interest on such obligations to become subject to Federal income taxation under the Code (except for the alternative minimum tax imposed on corporations by section 55 of the Code and except for the environmental tax imposed on corporations by section 59A of the Code) or subject the City to any penalties under section 148 of the Code. The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the bonds or any other provisions hereof until the date which is 60 days after the final maturity date or earlier prior redemption date thereof.

Section 10. For the benefit of the holders and beneficial owners from time to time of the bonds and bond anticipation notes authorized pursuant to this Resolution (the "obligations"), the City agrees, in accordance with and as an obligated person with respect to the obligations, under

Rule 15c2-12 promulgated by the Securities Exchange Commission pursuant to the Securities Exchange Act of 1934 (the “Rule”), to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of the Rule. In order to describe and specify certain terms of the City’s continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the City Comptroller is authorized and directed to sign and deliver, in the name and on behalf of the City, the commitment authorized by subsection 6(c) of the Rule (the “Commitment”) to be placed on file with the City Clerk, which shall constitute the continuing disclosure agreement made by the City for the benefit of holders and beneficial owners of the obligations in accordance with the Rule, with any changes or amendments that are not inconsistent with this resolution and not substantially adverse to the City and that are approved by the City Comptroller on behalf of the City, all of which shall be conclusively evidenced by the signing of the Commitment or amendments thereto. The agreement formed, collectively, by this paragraph and the Commitment, shall be the City’s continuing disclosure agreement for purposes of the Rule, and its performance shall be subject to the availability of funds and their annual appropriation to meet costs the City would be required to incur to perform thereunder. The City Comptroller is further authorized and directed to establish procedures in order to ensure compliance by the City with its continuing disclosure agreement, including the timely provision of information and notices. Prior to making any filing in accordance with the agreement or providing notice of the occurrence of any material event, the City Comptroller shall consult with, as appropriate, the Corporation Council and bond counsel or other qualified independent special counsel to the City. The City Comptroller acting in the name and on behalf of the City, shall be

entitled to rely upon any legal advice provided by the Corporation Council or such bond counsel or other special counsel in determining whether a filing should be made.

Section 11. The City by motion of the City Council, notwithstanding any provision of the City Charter, hereby submits this Resolution for approval by the qualified electors of the City at the next general election City election to be held on November 6, 2012.

Section 12. The following shall constitute the language of the ballot proposition and the City Clerk is hereby authorized and directed to provide in a timely manner a certified copy of such ballot proposition to the Westchester County Board of Elections pursuant to the applicable provisions of the Election Law to insure that such proposition is placed on the ballot for such electors of the City at such general City election:

PROPOSITION

“SHALL THE QUALIFIED ELECTORS OF THE CITY OF RYE, WESTCHESTER COUNTY, APPROVE A BOND RESOLUTION ADOPTED BY THE CITY COUNCIL OF SAID CITY ON _____ AUTHORIZING THE ISSUANCE OF \$1,500,000 SERIAL BONDS OF THE CITY OF RYE TO FINANCE THE ACQUISITION, CONSTRUCTION AND RECONSTRUCTION OF PUBLIC BUILDINGS IN AND FOR THE CITY?”

Section 13. The effectiveness of this Resolution is subject to the approval by the qualified electors of the City at the next general City election.

I, **Dawn F. Nodarse**, Clerk of the City of Rye, located in Westchester County, New York,

HEREBY CERTIFY as follows:

1. A _____ meeting of the City Council of the City of Rye was duly held on _____, 2012, and minutes of such meeting have been duly recorded in Volume ____, pgs. ____ to ____, of the Minute Book kept by me in accordance with law for the purpose of recording the minutes of meetings of the City Council of the City of Rye.

2. I have compared the attached extract with such minutes so recorded and such extract is a true and correct copy of such minutes and of the whole thereof insofar as such minutes relate to matters referred to in such extract.

3. Such minutes correctly state the time when such meeting was convened and the place where such meeting was held and the members of the City Council of the City who attended such meeting.

4. Notice of such meeting was given as prescribed by law and such meeting was open to all persons who were entitled by law to attend such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Rye, this __ day of _____, 2012.

(SEAL)

Dawn F. Nodarse
City Clerk

Bond Resolution

Construction, Reconstruction and Improvements to City Streets

**EXTRACTS FROM MINUTES OF MEETING OF THE CITY COUNCIL
OF THE CITY OF RYE, NEW YORK**

(Construction, Reconstruction and Improvements to City Streets)

A _____ meeting of the City Council of the City of Rye, located in the County of Westchester, New York, was held at _____, in Rye, New York, on _____, 2012 at ____ o'clock, __.M., at which meeting a quorum was at all times present and acting. There were:

PRESENT:

ABSENT:

ALSO PRESENT:

* * * * *

Member _____ moved the adoption of the following resolution. The motion was seconded by Member _____. The City Council was polled. The motion was adopted by a vote of affirmative votes (being at least five members of the voting strength of the City Council) and negative votes and ____ absent votes.

BOND RESOLUTION, DATED _____, 2012, AUTHORIZING THE ISSUANCE OF UP TO \$3,500,000 AGGREGATE PRINCIPAL AMOUNT SERIAL BONDS OF THE CITY OF RYE, NEW YORK, PURSUANT TO THE LOCAL FINANCE LAW, TO FINANCE THE CONSTRUCTION, RECONSTRUCTION AND IMPROVEMENTS TO CITY STREETS.

WHEREAS, the City Council of the City of Rye (the “City”), located in County of Westchester, in the State of New York (the “State”), has determined that it is in the public interest of the City to finance the costs of the construction, reconstruction and improvements to City streets, as set forth hereinabove, at a cost of up to \$3,500,000, including preliminary costs, all in accordance with the Local Finance Law; and

WHEREAS, the City Council has determined that it is in the public interest of the City to require the operation of this bond resolution to be approved by the qualified electors of the City, notwithstanding any other the legal requirements of the Local Finance Law;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rye, as follows:

Section 1. There is hereby authorized to be issued serial bonds of the City in the aggregate principal amount of up to \$3,500,000, pursuant to the Local Finance Law, in order to finance the cost of the specific object or purpose hereinafter described.

Section 2. The specific object or purpose to be financed by the issuance of such serial bonds is the construction, reconstruction and improvements to City streets, including applicable preliminary and incidental costs in connection therewith (the “Project”).

Section 3. The City Council of the City has ascertained and hereby states that (a) the estimated maximum cost of the Project is not to exceed \$3,500,000, (b) no money has heretofore been authorized to be applied to the payment of the costs of the Project; (c) the City Council of the City plans to finance the costs of the Project from the \$3,500,000 proceeds of the serial bonds or

bond anticipation notes authorized herein, and (d) the maturity of the obligations authorized herein will be in excess of five (5) years.

Section 4. It is hereby determined that the Project referred to in Section 2 hereof is a specific object or purpose described in paragraph 20 of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of the Project is fifteen (15) years. The serial bonds in the principal amount of up to \$3,500,000 authorized herein shall have a maximum maturity of fifteen (15) years computed from the earlier of (a) the date of such serial bonds, or (b) the date of the first bond anticipation notes issued in anticipation of the issuance of such serial bonds.

Section 5. Subject to the terms and conditions of this Resolution and the Local Finance Law, and pursuant to the provisions of Sections 21.00, 30.00, 50.00, 56.00 and 60.00, inclusive, of the Local Finance Law, the power to authorize bond anticipation notes in anticipation of the issuance of the serial bonds authorized by this Resolution and the renewal of such bond anticipation notes and the power to prescribe the terms, form and contents of such serial bonds and such bond anticipation notes authorized by this Resolution, and the power to issue, sell and deliver such serial bonds and bond anticipation notes are hereby delegated to the City Comptroller (or Acting City Comptroller), as the chief fiscal officer of the City. The City Comptroller is hereby authorized to execute on behalf of the City all serial bonds issued pursuant to this Resolution and all bond anticipation notes issued in anticipation of the issuance of such serial bonds, and the City Clerk is hereby authorized to affix the seal of the City to all such serial bonds and all such bond anticipation notes and to attest such seal. Each interest coupon, if any, representing interest payable on such serial bonds shall be authenticated by the facsimile signature of the City Comptroller.

Section 6. The faith and credit of the City is hereby and shall be irrevocably pledged for the punctual payment of the principal of and interest on all obligations authorized and issued pursuant to this Resolution as the same shall become due.

Section 7. When and if this Resolution takes effect following the approval thereof by the qualified voters of the City at the next general City election to be held on November 6, 2012, the City Clerk shall cause the same to be published together with a notice in substantially the form prescribed by Section 81.00 of the Local Finance Law in the, a newspaper having a general circulation in the City. The validity of the serial bonds authorized by this Resolution and of bond anticipation notes issued in anticipation of the sale of such serial bonds may be contested only if such obligations are authorized for an object or purpose for which the City is not authorized to expend money, or the provisions of law which should be complied with as of the date of the publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication, or if such obligations are authorized in violation of the provisions of the Constitution of the State.

Section 8. Prior to the issuance of obligations authorized to be issued by this bond resolution, the City Council of the City shall comply with all applicable provisions prescribed in Article 8 of the Environmental Conservation Law, all regulations promulgated thereunder by the New York State Department of Environmental Conservation, and all applicable Federal laws and regulations in connection with environmental quality review relating to the Project (collectively, the “environmental compliance proceedings”). In the event that any of the environmental compliance proceedings are not completed, or require amendment or modification subsequent to the date of adoption of this bond resolution, the City Council of the City will re-adopt, amend or modify this bond resolution prior to the issuance of obligations authorized to be issued herein upon the advice of

bond counsel. It is hereby determined by the City Council of the City that the Project will not have a significant effect on the environment.

Section 9. The City hereby declares its intention to issue the obligations authorized herein to finance the cost of the Project. The City covenants for the benefit of the holders of the obligations authorized herein that it will not make any use of the proceeds of such obligations, any funds reasonably expected to be used to pay the principal of or interest on such obligations or any other funds of the City, and will not make any use of the facilities financed with the proceeds of such obligations which would cause the interest on such obligations to become subject to Federal income taxation under the Internal Revenue Code of 1986, as amended (the "Code"), (except for the alternative minimum tax imposed on corporations by section 55 of the Code and except for the environmental tax imposed on corporations by section 59A of the Code) or subject the City to any penalties under section 148 of the Code, and that it will not take any action or omit to take any action with respect to such obligations, the proceeds thereof or any facilities financed thereby if such action or omission would cause the interest on such obligations to become subject to Federal income taxation under the Code (except for the alternative minimum tax imposed on corporations by section 55 of the Code and except for the environmental tax imposed on corporations by section 59A of the Code) or subject the City to any penalties under section 148 of the Code. The foregoing covenants shall remain in full force and effect notwithstanding the defeasance of the bonds or any other provisions hereof until the date which is 60 days after the final maturity date or earlier prior redemption date thereof.

Section 10. For the benefit of the holders and beneficial owners from time to time of the bonds and bond anticipation notes authorized pursuant to this Resolution (the "obligations"), the City agrees, in accordance with and as an obligated person with respect to the obligations, under

Rule 15c2-12 promulgated by the Securities Exchange Commission pursuant to the Securities Exchange Act of 1934 (the “Rule”), to provide or cause to be provided such financial information and operating data, financial statements and notices, in such manner, as may be required for purposes of the Rule. In order to describe and specify certain terms of the City’s continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the City Comptroller is authorized and directed to sign and deliver, in the name and on behalf of the City, the commitment authorized by subsection 6(c) of the Rule (the “Commitment”) to be placed on file with the City Clerk, which shall constitute the continuing disclosure agreement made by the City for the benefit of holders and beneficial owners of the obligations in accordance with the Rule, with any changes or amendments that are not inconsistent with this resolution and not substantially adverse to the City and that are approved by the City Comptroller on behalf of the City, all of which shall be conclusively evidenced by the signing of the Commitment or amendments thereto. The agreement formed, collectively, by this paragraph and the Commitment, shall be the City’s continuing disclosure agreement for purposes of the Rule, and its performance shall be subject to the availability of funds and their annual appropriation to meet costs the City would be required to incur to perform thereunder. The City Comptroller is further authorized and directed to establish procedures in order to ensure compliance by the City with its continuing disclosure agreement, including the timely provision of information and notices. Prior to making any filing in accordance with the agreement or providing notice of the occurrence of any material event, the City Comptroller shall consult with, as appropriate, the Corporation Council and bond counsel or other qualified independent special counsel to the City. The City Comptroller acting in the name and on behalf of the City, shall be

entitled to rely upon any legal advice provided by the Corporation Council or such bond counsel or other special counsel in determining whether a filing should be made.

Section 11. The City by motion of the City Council, notwithstanding any provision of the City Charter, hereby submits this Resolution, for approval by the qualified electors of the City at the next general City election to be held on November 6, 2012.

Section 12. The following shall constitute the language of the ballot proposition and the City Clerk is hereby authorized and directed to provide in a timely manner a certified copy of such ballot proposition to the Westchester County Board of Elections pursuant to the applicable provisions of the Election Law to insure that such proposition is placed on the ballot for such electors of the City at such general City election:

PROPOSITION

“SHALL THE QUALIFIED ELECTORS OF THE CITY OF RYE, WESTCHESTER COUNTY, APPROVE A BOND RESOLUTION ADOPTED BY THE CITY COUNCIL OF SAID CITY ON _____ AUTHORIZING THE ISSUANCE OF \$3,500,000 SERIAL BONDS OF THE CITY OF RYE TO FINANCE THE CONSTRUCTION, RECONSTRUCTION AND IMPROVEMENTS TO CITY STREETS IN AND FOR THE CITY?”

Section 13. The effectiveness of this Resolution is subject to the approval by the qualified electors of the City at the next general City election.

I, **Dawn F. Nodarse**, Clerk of the City of Rye, located in Westchester County, New York,

HEREBY CERTIFY as follows:

1. A _____ meeting of the City Council of the City of Rye was duly held on _____, 2012, and minutes of such meeting have been duly recorded in Volume ____, pgs. ____ to ____, of the Minute Book kept by me in accordance with law for the purpose of recording the minutes of meetings of the City Council of the City of Rye.

2. I have compared the attached extract with such minutes so recorded and such extract is a true and correct copy of such minutes and of the whole thereof insofar as such minutes relate to matters referred to in such extract.

3. Such minutes correctly state the time when such meeting was convened and the place where such meeting was held and the members of the City Council of the City who attended such meeting.

4. Notice of such meeting was given as prescribed by law and such meeting was open to all persons who were entitled by law to attend such meeting.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Rye, this __ day of _____, 2012.

(SEAL)

Dawn F. Nodarse
City Clerk

Ballot Proposition

Acquisition, Construction and Reconstruction of Public Buildings

(212) 872-9862

July 6, 2012

VIA EMAIL

Joseph S. Fazzino Jr.
Acting City Comptroller
City of Rye, Finance Department
1051 Boston Post Road
Rye, New York 10580

Re: City of Rye, New York
Ballot Proposition-\$1,500,000 Serial Bond Resolution acquisition,
construction and reconstruction of public buildings

Dear Joe:

Enclosed please find the following:

1. Resolution of the City Council calling an election and approving the form of ballot proposition.
2. Certification of ballot proposition and statement of form of proposition.
3. Abstract of bond resolution (we will advise you as to the number of copies of the abstract and resolution to send to the Westchester County Board of Elections).
4. Suggested cover letter to send to the Board of Elections.

Joseph S. Fazzino Jr.
July 6, 2012
Page 2

We suggest that you attach a certified copy of the bond resolution to the abstract. These materials must be filed with the Westchester County Board of Elections no later than thirty-six days (Monday October 1, 2012) prior to the date of the election (Tuesday November 6, 2012). Please call me if you have any questions.

Very truly yours,

Lauren M. Trialonas

Cc: Kenneth W. Bond
Enclosures

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RYE,
NEW YORK, SUBMITTING THE APPROVAL OF A BOND
RESOLUTION TO THE QUALIFIED VOTERS OF SAID CITY,
APPROVING THE FORM OF BALLOT PROPOSITION, AND
DIRECTING THE CLERK OF SAID CITY TO PROVIDE A
CERTIFIED COPY OF SAID PROPOSITION TO THE BOARD
OF ELECTIONS.

WHEREAS, the City Council of the City of Rye, New York (herein, the "City Council" and the "City"), located in the County of Westchester, State of New York, on _____, 2012 adopted a serial bond resolution in the manner required by Section 33.00 of the Local Finance Law which authorizes \$1,500,000 of the City's general obligation serial bonds and bond anticipation notes to be issued to finance the acquisition, construction and reconstruction of public buildings in and for the City (the "Resolution"); and

WHEREAS, the effectiveness of the Resolution was made subject to a mandatory referendum pursuant, where applicable, to the provisions of the City Charter; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Rye, as follows:

1. An election of the qualified voters of the City shall be held on the date of the next general election (November 6, 2012).

2. The form of the ballot proposition shall be in the following language:

"SHALL THE QUALIFIED ELECTORS OF THE CITY OF RYE,
WESTCHESTER COUNTY, APPROVE A BOND RESOLUTION
ADOPTED BY THE CITY COUNCIL OF SAID CITY ON
_____ AUTHORIZING THE ISSUANCE OF \$1,500,000
SERIAL BONDS OF THE CITY OF RYE TO FINANCE THE
ACQUISITION, CONSTRUCTION AND RECONSTRUCTION
OF PUBLIC BUILDINGS IN AND FOR THE CITY?"

3. The City Clerk is hereby authorized and directed to provide in a timely manner, but in event later than October 1, 2012, a certified copy of the foregoing ballot proposition and abstract thereof to the Westchester County Board of Elections pursuant to the applicable provisions of the Election Law to insure that such proposition is placed on the ballot for such electors of the City at such general election.

4. This resolution shall take effect immediately upon its adoption by the City Council.

* * * * *

Member _____ moved the adoption of the foregoing resolution. The motion was seconded by Member _____. The City Council was polled. The motion was adopted by a vote of _____ affirmative votes (at least 5 votes) and _____ negative votes and _____ absent votes.

[cover letter]

_____, 2012

Board of Elections
134 Court Street
White Plains, New York 10601

Re: City of Rye, New York
Ballot Proposition for Approval or
Disapproval of \$1,500,000 Bond Resolution

Dear Commissioners:

In compliance with the Election Law, and particularly Section 4-108 thereof, I hereby deliver and transmit to you the following:

1. A certified copy of the text of the proposition in substantially the form adopted by the City Council of the City of Rye on _____, 2012.
2. A statement of the form of such proposition to be submitted to the qualified voters of said City, which statement is contained in my said certification.
3. [100] copies of an abstract of such proposition concisely stating the purpose and effect thereof and summarizing the material provisions of the bond resolution, together with a certified copy of such bond resolution and a certified copy of such resolution calling an election.

Should you require anything further, please advise.

Sincerely,

Dawn F. Nodarse
City Clerk

**CITY OF RYE
PROPOSITION**

“SHALL THE QUALIFIED ELECTORS OF THE CITY OF RYE, WESTCHESTER COUNTY, APPROVE A BOND RESOLUTION ADOPTED BY THE CITY COUNCIL OF SAID CITY ON _____, 2012 AUTHORIZING THE ISSUANCE OF \$1,500,000 SERIAL BONDS OF THE CITY OF RYE TO FINANCE THE ACQUISITION, CONSTRUCTION AND RECONSTRUCTION OF PUBLIC BUILDINGS IN AND FOR THE CITY?”

YES

NO

CERTIFICATION

I, **Dawn F. Nodarse**, Clerk of the City of Rye, located in Westchester County, New York, **HEREBY CERTIFY** as follows:

1. The foregoing language is a true and correct copy of the text in substantially the form adopted by the City Council of the City of Rye at a special meeting held on _____, 2012 of the proposition to be placed on the ballot at the general election on November 6, 2012, being a general election of the City of Rye.

2. The above language constitutes the form in which such proposition is to be placed on the ballot at such general election.

3. By resolution of such City Council of the City of Rye, I am authorized and directed to provide the Westchester County Board of Elections in a timely manner a certified copy of such ballot proposition pursuant to the applicable provisions of the Election Law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Rye, this __ day of _____, 2012

Dawn F. Nodarse
City Clerk

(SEAL)

ABSTRACT

An abstract of such Bond Resolution adopted by the City Council of the City of Rye on _____, 2012 concisely stating the purpose and effect thereof, is as follows:

FIRST: The Bond Resolution authorizes the issuance of \$1,500,000 serial bonds of the City of Rye, located in the County of Westchester, pursuant to the provisions of the New York Local Finance Law (the "Law") to finance the costs of the acquisition, construction and reconstruction of public buildings in and for the City (the "Project"). The Bond Resolution states that the estimated maximum cost of the Project is \$1,500,000 and that the plan of financing includes the issuance of \$1,500,000 serial bonds therein authorized and states further that the faith and credit of the City is irrevocably pledged to pay principal and interest on such bonds. The Bond Resolution authorizes the City Council of said City to levy a tax to pay such principal and interest.

SECOND: The Bond Resolution determines that the period of probable usefulness of the Project is twenty-five (25) years pursuant to the limitations of Section 11.00a. 12(a)(1) of the Law.

THIRD: The Bond Resolution delegates to the Acting Comptroller or Chief Financial Officer of the City the power and duties of the City Council as to the issuance of such bonds and any notes to be issued in anticipation of such bonds.

FOURTH: The Bond Resolution requires that the City shall comply with all applicable environmental quality review proceedings prior to the issuance of any bonds or notes authorized therein.

FIFTH: The City Council in the Bond Resolution covenants to not make use of any proceeds of such bonds or notes and to not make use of the Project in any way which would cause the interest on such bonds or notes to become subject to Federal income taxation under the Internal Revenue Code of 1986, as amended.

SIXTH: The City Council in the Bond Resolution covenants to provide or cause to be provided for the benefit of the holders or owners of such bonds or notes such financial information as may be required under rules of the Federal Securities and Exchange Commission during the time such bonds or notes are outstanding pursuant to a continuing disclosure agreement to be placed on file with the City Clerk.

SEVENTH: The City Council in the Bond Resolution requires that the Bond Resolution shall be subject to a Mandatory Referendum at an election to be held at the next general election on November 6, 2012. The Bond Resolution requires that the Bond Resolution be submitted for approval by the qualified electors of the City at the next general election to be held on November 6, 2012.

[Attach a certified copy of the bond resolution]

Ballot Proposition

Construction, Reconstruction and Improvements to City Streets

(212) 872-9862

July 6, 2012

VIA EMAIL

Joseph S. Fazzino Jr.
Acting City Comptroller
City of Rye, Finance Department
1051 Boston Post Road
Rye, New York 10580

Re: City of Rye, New York
Ballot Proposition-\$3,500,000 Serial Bond Resolution construction,
reconstruction and improvements to City streets.

Dear Joe:

Enclosed please find the following:

1. Resolution of the City Council calling an election and approving the form of ballot proposition.
2. Certification of ballot proposition and statement of form of proposition.
3. Abstract of bond resolution (we will advise you as to the number of copies of the abstract and resolution to send to the Westchester County Board of Elections).
4. Suggested cover letter to send to the Board of Elections.

Joseph S. Fazzino Jr.
July 6, 2012
Page 2

We suggest that you attach a certified copy of the bond resolution to the abstract. These materials must be filed with the Westchester County Board of Elections no later than thirty-six days (Monday October 1, 2012) prior to the date of the election (Tuesday November 6, 2012). Please call me if you have any questions.

Very truly yours,

Lauren M. Trialonas

Cc: Kenneth W. Bond
Enclosures

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RYE,
NEW YORK, SUBMITTING THE APPROVAL OF A BOND
RESOLUTION TO THE QUALIFIED VOTERS OF SAID CITY,
APPROVING THE FORM OF BALLOT PROPOSITION, AND
DIRECTING THE CLERK OF SAID CITY TO PROVIDE A
CERTIFIED COPY OF SAID PROPOSITION TO THE BOARD
OF ELECTIONS.

WHEREAS, the City Council of the City of Rye, New York (herein, the "City Council" and the "City"), located in the County of Westchester, State of New York, on _____, 2012 adopted a serial bond resolution in the manner required by Section 33.00 of the Local Finance Law which authorizes \$3,500,000 of the City's general obligation serial bonds and bond anticipation notes to be issued to finance the construction, reconstruction and improvements to City streets in and for the City (the "Resolution"); and

WHEREAS, the effectiveness of the Resolution was made subject to a mandatory referendum, where applicable, pursuant to the provisions of the City Charter; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Rye, as follows:

1. An election of the qualified voters of the City shall be held on the date of the next general election (November 6, 2012).

2. The form of the ballot proposition shall be in the following language:

"SHALL THE QUALIFIED ELECTORS OF THE CITY OF RYE,
WESTCHESTER COUNTY, APPROVE A BOND RESOLUTION
ADOPTED BY THE CITY COUNCIL OF SAID CITY ON
_____ AUTHORIZING THE ISSUANCE OF \$3,500,000
SERIAL BONDS OF THE CITY OF RYE TO FINANCE THE
CONSTRUCTION, RECONSTRUCTION AND
IMPROVEMENTS TO CITY STREETS IN AND FOR THE
CITY?"

3. The City Clerk is hereby authorized and directed to provide in a timely manner, but in event later than October 1, 2012, a certified copy of the foregoing ballot proposition and abstract thereof to the Westchester County Board of Elections pursuant to the applicable provisions of the Election Law to insure that such proposition is placed on the ballot for such electors of the City at such general election.

4. This resolution shall take effect immediately upon its adoption by the City Council.

* * * * *

Member _____ moved the adoption of the foregoing resolution. The motion was seconded by Member_____. The City Council was polled. The motion was adopted by a vote of _____ affirmative votes (at least 5 votes) and _____ negative votes and _____ absent votes.

[cover letter]

_____, 2012

Board of Elections
134 Court Street
White Plains, New York 10601

Re: City of Rye, New York
Ballot Proposition for Approval or
Disapproval of \$3,500,000 Bond Resolution

Dear Commissioners:

In compliance with the Election Law, and particularly Section 4-108 thereof, I hereby deliver and transmit to you the following:

1. A certified copy of the text of the proposition in substantially the form adopted by the City Council of the City of Rye on _____, 2012.
2. A statement of the form of such proposition to be submitted to the qualified voters of said City, which statement is contained in my said certification.
3. [100] copies of an abstract of such proposition concisely stating the purpose and effect thereof and summarizing the material provisions of the bond resolution, together with a certified copy of such bond resolution and a certified copy of such resolution calling an election.

Should you require anything further, please advise.

Sincerely,

Dawn F. Nodarse
City Clerk

**CITY OF RYE
PROPOSITION**

“SHALL THE QUALIFIED ELECTORS OF THE CITY OF RYE, WESTCHESTER COUNTY, APPROVE A BOND RESOLUTION ADOPTED BY THE CITY COUNCIL OF SAID CITY ON _____, 2012 AUTHORIZING THE ISSUANCE OF \$3,500,000 SERIAL BONDS OF THE CITY OF RYE TO FINANCE THE CONSTRUCTION, RECONSTRUCTION AND IMPROVEMENTS TO CITY STREETS IN AND FOR THE CITY?”

YES

NO

CERTIFICATION

I, **Dawn F. Nodarse**, Clerk of the City of Rye, located in Westchester County, New York, **HEREBY CERTIFY** as follows:

1. The foregoing language is a true and correct copy of the text in substantially the form adopted by the City Council of the City of Rye at a special meeting held on _____, 2012 of the proposition to be placed on the ballot at the general election on November 6, 2012, being a general election of the City of Rye.

2. The above language constitutes the form in which such proposition is to be placed on the ballot at such general election.

3. By resolution of such City Council of the City of Rye, I am authorized and directed to provide the Westchester County Board of Elections in a timely manner a certified copy of such ballot proposition pursuant to the applicable provisions of the Election Law.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City of Rye, this __ day of _____, 2012

Dawn F. Nodarse
City Clerk

(SEAL)

ABSTRACT

An abstract of such Bond Resolution adopted by the City Council of the City of Rye on _____, 2012 concisely stating the purpose and effect thereof, is as follows:

FIRST: The Bond Resolution authorizes the issuance of \$3,500,000 serial bonds of the City of Rye, located in the County of Westchester, pursuant to the provisions of the New York Local Finance Law (the "Law") to finance the costs of the construction, reconstruction and improvements to City streets in and for the City (the "Project"). The Bond Resolution states that the estimated maximum cost of the Project is \$3,500,000 and that the plan of financing includes the issuance of \$3,500,000 serial bonds therein authorized and states further that the faith and credit of the City is irrevocably pledged to pay principal and interest on such bonds. The Bond Resolution authorizes the City Council of said City to levy a tax to pay such principal and interest.

SECOND: The Bond Resolution determines that the period of probable usefulness of the Project is fifteen (15) years pursuant to the limitations of Section 11.00a. 20 of the Law.

THIRD: The Bond Resolution delegates to the Acting Comptroller or Chief Financial Officer of the City the power and duties of the City Council as to the issuance of such bonds and any notes to be issued in anticipation of such bonds.

FOURTH: The Bond Resolution requires that the City shall comply with all applicable environmental quality review proceedings prior to the issuance of any bonds or notes authorized therein.

FIFTH: The City Council in the Bond Resolution covenants to not make use of any proceeds of such bonds or notes and to not make use of the Project in any way which would cause the interest on such bonds or notes to become subject to Federal income taxation under the Internal Revenue Code of 1986, as amended.

SIXTH: The City Council in the Bond Resolution covenants to provide or cause to be provided for the benefit of the holders or owners of such bonds or notes such financial information as may be required under rules of the Federal Securities and Exchange Commission during the time such bonds or notes are outstanding pursuant to a continuing disclosure agreement to be placed on file with the City Clerk.

SEVENTH: The City Council in the Bond Resolution requires that the Bond Resolution shall be subject to a Mandatory Referendum at an election to be held at the next general election on November 6, 2012. The Bond Resolution requires that the Bond Resolution be submitted for approval by the qualified electors of the City at the next general election to be held on November 6, 2012.

[Attach a certified copy of the bond resolution]